



Code of Intellectual Property Act No. 52 of 1979
(As Amended by Act Nos. 30 of 1980, 2 of 1983, 17 of 1990,
13 of 1997 and 40 of 2000)

TABLE OF CONTENTS

Table with 3 columns: Section, Description, and Page Number. Includes sections for Administration, Copyright, and Industrial Designs.



	Application Fee.....	35
	Examination of Application.....	36
	Registration.....	37
	Issue of Certificate of Registration.....	38
	Register of Industrial Designs.....	39
	Examination of Register and Certified Copies.....	40
	Publication of Registered Industrial Designs.....	41
Chapter VI:	Duration of Registration	
	Duration of Registration.....	42
	Renewal.....	43
Chapter VII:	Rights of Registered Owner of Industrial Design	
	Rights of Registered Owner of Industrial Design.....	44
	Limitation of Registered Owner’s Rights.....	45
Chapter VIII:	Assignment and Transmission of Applications and Registrations	
	Assignment and Transmission of Applications and Registrations.....	46
	Joint Ownership of Applications and Registration.....	47
Chapter IX:	Licence Contracts	
	Interpretation.....	48
	Form and Record of Licence Contract.....	49
	Rights of Licensee.....	50
	Rights of Licensor.....	51
	Invalid Clauses in Licence Contracts.....	52
	Effect of Nullity of Registration of Licence Contract ...	53
	Expiry, Termination or Invalidation of Licence Contract.....	54
	Licence Contracts Involving Payments Abroad.....	55
Chapter X:	Renunciation and Nullity of Registration	
	Renunciation of Registration.....	56
	Nullity of Registration.....	57
	Date and Effect of Nullity.....	58
Part IV:	Patents.....	
Chapter XI:	Definitions	
	Definition of Invention.....	59
	Patentable Inventions.....	60
	Novelty.....	61
	Inventions Step.....	62
	Industrial Application.....	63
Chapter XII:	Right to a Patent	
	Right to a Patent.....	64
	Usurpation Judicial Assignment of Patent Application or Patent.....	65
	Inventions Made by an Employee or Pursuant to a Commission.....	66
	Naming of Inventor.....	67
Chapter XIII:	Requirements of Application and Procedure for Grant	
	Requirements of Application.....	68
	Application Fee.....	69
	Search Report.....	70
	Unity of Invention.....	71
	Amendment and Division of Application.....	72
	Right of Priority.....	73
	Filing Date.....	74
	Examination.....	75
	Grant of Patent.....	76
	Register of Patents.....	77



	Examination of Register and Certified Copies	78
	Inspection of Files	79
Chapter XIV:	Duration of Patent	
	Duration of Patent	80
Chapter XV:	Rights of Owner of Patent	
	Rights of Owner of Patent	81
	Limitation of Owner's Rights	82
	Rights Derived from Prior Manufacture or Use	83
Chapter XVI:	Assignment and Transmission of Patent Applications and Patents	
	Assignment and Transmission of Patent Applications and Patents	84
	Joint Ownership of Patent Applications or Patents	85
Chapter XVII:	Licence Contracts	
	Interpretation	86
	Form and Record of Licence Contract	87
	Rights of Licensee	88
	Rights of the Licensor	89
	Invalid Clauses in Licence Contracts	90
	Effect of Patent Application not Being Granted or Patent Being Declared Null and Void	91
	Expiry Termination, or Invalidation of Licence Contract	92
	Licence Contracts Involving Payments Abroad	93
Chapter XVIII:	Surrender and Nullity of Patent	
	Surrender of Patent	94
	Nullity of Patent	95
	Date and Effect of Nullity	96
Part V:	Marks, Trade Names and Unfair Competition	
Chapter XIX:	Definitions	
	Definitions	97
Chapter XX:	Admissibility of Marks	
	Admissibility of Marks	98
	Marks Inadmissible on Objective Grounds	99
	Marks Inadmissible by Reason of Third-Party Rights	100
	Trust not to Be Entered in Register	101
Chapter XXI:	Requirements of Application and Procedure for Registration	
	Requirements of Application	102
	Right of Priority	103
	Temporary Protection of Mark Exhibited at International Exhibition	104
	Application Fee	105
	Examination of Application as to Form	106
	Registration Mark after Further Examination and Publication of Mark	107
	Non-Completion of Registration	108
	Register of Marks and Issue of Certificate	109
	Publication of Registered Marks	110
	Examination of Register and Certified Copies	111
	Associated Marks	112
	Assignment and User of Associated Marks	113
Chapter XXII:	Duration of Registration	
	Duration of Registration	114
	Renewal	115
	Alteration of Registered Mark	116



Chapter XXIII:	Rights of Registered Owner of Mark	
	Rights of Registered Owner	117
	Limitation of Registered Owner's Rights.....	118
Chapter XXIV:	Assignment and Transmission of Applications and Registrations	
	Assignment and Transmission of Applications and Registrations	119
Chapter XXV:	Licence Contracts	
	Interpretation.....	120
	Form and Record of Licence Contract	121
	Rights of Licensee.....	122
	Rights of Licensor.....	123
	Nullity of Licence Contract and Certain Clauses	124
	Cancellation of Licence Contracts	125
	Licence Contracts Involving Payments Abroad	126
	Effect of Nullity of Registration on Licence Contract...	127
	Expiry, Termination or Invalidation of Licence Contract.....	128
Chapter XXVI:	Renunciation and Nullity of Registration	
	Renunciation of Registration.....	129
	Nullity of Registration.....	130
	Date and Effect of Nullity	131
Chapter XXVII:	Removal of Mark	
	Removal of Mark	132
	Date and Effect of Removal of Mark	133
Chapter XXVIII:	Collective Marks	
	Collective Marks	134
	Application for Registration of Collective Mark.....	135
	Registration and Publication of Collective Marks.....	136
	Changes in Conditions Governing Use of Collective Mark.....	137
	Use of Collective Marks and other Matters.....	138
Chapter XXIX:	Trade Names and Unfair Competition	
	Prohibited Trade Names.....	139
	Protection of Trade Names.....	140
	Assignment and Transmission of Trade Names	141
	Unfair Competition	142
Part VI:	Offences and Penalties	
Chapter XXX:	Falsification of Entries in any Register	143
	Infringement of Copyright	144
	Infringement of Industrial Designs.....	145
	False Representations Regarding Industrial Designs ...	146
	Infringement of Patents	147
	False Representations Regarding Patents.....	148
	Unlawful Disclosure of Information Relating to Patents.....	149
	Infringement of Marks	150
	False Representations Regarding Marks	151
	Other Offences as to Marks and Trade Descriptions....	152
	Offences by Bodies Corporate	153
	Interpretation.....	154
	False Name or Initials	155
	Forging Marks.....	156
	Applying Marks and Descriptions.....	157
	Exemption of Certain Persons Employed in Ordinary Course of Business.....	158



	Watches.....	159
	Mark How Described in Pleading	160
	Rules as to Evidence	161
	Punishment of Accessories.....	162
	Search Warrant.....	163
	Costs of Defence and of Prosecution	164
	Limitation of Prosecution.....	165
	Prohibition on Importation	166
	Implied Warranty on Sale of Marked Goods.....	167
	Provisions as to False Description not to Apply in Certain Cases	168
	Savings.....	169
	Cognizable and Bailable Offences	170
Part VII:	Miscellaneous	
Chapter XXXI:	Regulations	
	Regulations	171
Chapter XXXII:	Applications to, and Proceedings Before, the Director and Court	
	Correction and Rectification of Register	172
	Power to Make Copies of Damaged Volumes of Any Register, to Prepare and Insert Reconstructed Folios	173
	Certificate of Director to be Evidence.....	174
	Certified Copies to be Evidence.....	175
	Mode of Giving Evidence	176
	Exercise of Discretionary Power by Director.....	177
	Director May Take Directions of Law Officers	178
	Infringement Proceedings by Registered Owner of Industrial Design, Patent or Mark	179
	Infringement Proceedings by or at Request of Licensee	180
	Declaration of Non-Infringement.....	181
	Appeals	182
	Costs of Proceedings Before Director and Court	183
	Stamp Duties	184
	Fund	185
	Interpretation.....	186
Chapter XXXIII:	Repeals and Savings	
	Copyright: Repeal of Chapter 154 and Savings	187
	Industrial Designs: Repeal of Chapter 153 and Savings	188
	Patents: Repeal of Chapter 152 and Savings	189
	Marks: Repeal of Chapters 150 and 151 and Savings..	190
	Additional Repeals.....	191
	Additional Savings.....	192
Part VIII:	Constitution and Powers of Advisory Commission	
	Appointments &c. of Advisory Commission	193

AN ACT TO REVISE, CONSOLIDATE, AMEND AND EMBODY IN THE FORM OF A CODE THE LAW RELATING TO COPYRIGHT INDUSTRIAL DESIGNS, PATENTS, MARKS, TRADE NAMES AND UNFAIR COMPETITION AND PROVIDE FOR THE BETTER REGISTRATION, CONTROL AND ADMINISTRATION THEREOF AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:—



1. This Act may be cited as the Code of Intellectual Property Act, No. 52 of 1979, (hereinafter referred to as the “Code”) and shall come into operation on such date as the Minister may appoint by Order published in the *Gazette* (in this Code referred to as the “appointed date”).

PART I ADMINISTRATION

Chapter I

Appointment of Director of Intellectual Property and his Duties

2.—(1) There may be appointed a person to be or to act as Director of Intellectual Property of Sri Lanka (hereinafter referred to as the “Director”).

(2) The Director shall

(a) subject to the general direction of the Minister, be vested with the control and superintendence of the registration and administration of Industrial Designs, Patents, Marks and of any other matter, as provided by the Code and of all persons appointed for, or engaged in, the carrying out of the provisions of the Code; and”

(b) take all necessary steps to promote and encourage a national awareness of the subject of copyright by the organization of exhibitions, contests, seminars and publications and by the setting up of societies for the protection of copyright.

Deputy Directors and Assistant Directors

3.—(1) There may from time to time be appointed a fit and proper person, or each of two or more such persons, to be or to act as a Deputy Director of Intellectual Property and such other Assistant Directors as the Minister may consider necessary.

(2) Any person so appointed may exercise, perform or discharge any power, duty or function expressly conferred or imposed upon the Deputy Director or Assistant Director, as the case may be, and may, subject to the directions of the Minister and under the authority and control of the Director, exercise, perform or discharge any power, duty or function conferred or imposed upon the Director by or under this Code.

(3) There shall be appointed such other officers and servants as may be necessary for the administration of the Code.

Office and Maintenance of Registers

4.—(1) The Minister may by notification in the *Gazette* establish an office called the National Intellectual Property Office of Sri Lanka (hereinafter referred to as the “Office”)



which shall be the only office in Sri Lanka for the registration and administration of industrial designs, patents and marks and any other matter as provided by the Code.

(2) All registers required to be kept and maintained under the provisions of this Code shall be kept and maintained under the supervision of the Director at the Office and such registers shall be the only legally recognized registers for the registration of industrial designs, patents and marks in Sri Lanka and in respect of any other matters as provided by the Code.

PART II COPYRIGHT

Chapter II

Interpretation

6. For the purposes of this Part—

“broadcasting” means the transmitting, for reception by the general public, by wireless or by means of wire, of sounds or of images and sounds;

“computer” means an electronic or other device having the capability of storing and processing information;

“computer program” means a set of instructions expressed in words, codes, schemes or in any other form, which is capable, when incorporated in a medium that a computer can read, of causing the computer to perform or achieve a particular task or result;

“folklore” means all literary and artistic works created in Sri Lanka by various communities, passed on from generation to generation and constituting one of the basic elements of the traditional cultural heritage;

“performance” means a public performance or delivery of a work by any means whatsoever;

“published works” means works published in any manner whatsoever with the consent of their authors provided that the number of copies so published are sufficient to satisfy the reasonable requirements of the public, having regard to the nature of the work;

“reproduction” means the making of one or more copies of a literary, artistic or scientific work, in any material form including any sound or visual recording;

“works first published” means works first published in Sri Lanka, or works first published abroad but also published in Sri Lanka within thirty days from the earlier publication;

“work of joint authorship” means a work created by two or more authors in collaboration, in which the individual contributions are indistinguishable from each other.



Works Protected

7.—(1) Authors of original literary, artistic and scientific works shall be entitled to protection of their works under this Part.

(2) Literary, artistic and scientific works shall include in particular—

- (a) books, pamphlets and other writings;
 - (b) lectures, addresses, sermons and other works of the same nature;
 - (c) dramatic and dramatico-musical works;
 - (d) musical works, whether or not they are in written form and whether or not they include accompanying words;
 - (e) choreographic works and pantomimes;
 - (f) cinematographic, radiophonic and audio-visual works;
 - (g) works of drawing, painting, architecture, sculpture, engraving, lithography and tapestry;
 - (h) photographic works, including works expressed by processes analogous to photography;
 - (i) works of applied art, whether handicraft or produced on an industrial scale;
 - (j) illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science;
 - (k) computer programs.
- (3) Works shall be protected irrespective of their quality and the purpose for which they were created.

Derivative Works

8.—(1) The following shall also be protected as original works—

- (a) translations, adaptations, arrangements and other transformations of literary, artistic or scientific works;
- (b) collections of literary, artistic or scientific works, such as encyclopaedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations; and
- (c) works derived from Sri Lanka folklore.

(2) The protection of any work referred to in subsection (1) shall be without prejudice to any protection of a pre-existing work utilized for the making of such work.



Works Not Protected

9. Notwithstanding the provisions of sections 7 and 8, Protection shall not extend to—

(a) laws and decisions of courts and administrative bodies, as well as to official translations thereof; and

(b) news of the day published, broadcast or publicly communicated by any other means.

Economic Rights

10. Subject to the provisions of sections 12 to 16 the author of a protected work shall have the exclusive right to do or authorize any other person to do the following acts in relation to the whole work or a part thereof—

(a) reproduce the work;

(b) make a translation, adaptation, arrangement, or other transformation of the work;

(c) communicate the work to the public by performance, broadcasting, television or any other means.

Moral Rights

11.—(1) The author of a protected work shall have the right—

(a) to claim authorship of his work, in particular that his authorship be indicated in connection with any of the acts referred to in section 10, except when the work is included incidentally or accidentally when reporting current events by means of broadcasting or television;

(b) to object to, and to seek relief in connection with, any distortion, mutilation or other modification of, and any other derogatory action in relation to, his work, where such action would be or is prejudicial to his honour or reputation.

(2) The rights referred to in subsection (1) shall subsist for the life of the author and fifty years thereafter. After his death, the said rights shall be exercisable by his heirs.

(3) The rights referred to in subsection (1) shall be exercisable even where the author or his heirs do not have the rights referred to in section 10.

(4) The rights referred to in subsection (1) shall not be transferable.

Works of Sri Lanka Folklore

12.—(1) In the case of works of Sri Lanka folklore, the rights referred to in sections 10 and 11 (1) shall be exercised by the Minister in charge of the subject of Culture.



(2) Works of Sri Lanka folklore shall be protected by all means available under this Part, without limitation in time.

(3) Copies of works of Sri Lanka folklore made abroad and copies of translations, adaptations, arrangements, or other transformations of works of Sri Lanka folklore made abroad, without the authorization of the Minister in charge of the subject of Culture, shall be neither imported nor distributed.

Fair Use

13. Notwithstanding the provisions of section 10, the following uses of a protected work, either in the original languages or in translation, shall be permissible without the author's consent—

(a) in the case of any work that has been lawfully published—

(i) the reproduction, translation, adaptation, arrangement or other transformation of such work exclusively for the user's own personal and private use;

(ii) the inclusion, subject to mention of the source and the name of the author, of quotations from such work in another work, provided that such quotations are compatible with fair practice and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries;

(iii) the utilization of the work by way of illustration in publications, broadcasts or sound or visual recordings for teaching to the extent justified by the purpose, or the communication for teaching purposes of the work broadcast or televised for use in schools, education, universities and professional training;

Provided that such use is compatible with fair practice and that the source and the name of the author are mentioned in the publication, broadcast, television broadcast or recording;

(b) in the case of any article published in newspapers or periodicals on current economic, political or religious topics, and in the case of any broadcast or televised work of the same character, the reproduction of such article or such work in the press, or the communication of it to the public, unless the said article when first published, or the said broadcast or televised work when broadcast or televised, was accompanied by an express condition prohibiting such use, and that the source of the work when used in the said manner is clearly indicated;

(c) for the purposes of reporting on a current event by means of photography, cinematography or communication to the public, the reproduction or making available to the public, to the extent justified by the informatory purpose of any work that can be seen or heard in the course of the said current event;

(d) the reproduction of works of art and of architecture in a film or television broadcast, and the communication to the public of the works so reproduced, if the said works are permanently located in a place where they can be viewed by the public or are included in the



film or television broadcast only by way of background or as incidental to the essential matters represented;

(e) the reproduction, by sound recording, photographic or similar process, by public libraries, non-commercial documentation centres, scientific institutions and educational establishments, of literary, artistic or scientific works which have already been lawfully made available to the public:

Provided that such reproduction and the number of copies made are limited to the needs of their activities, do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author;

(f) the reproduction in the press of—

(i) any political speech delivered in public or any speech delivered during legal proceedings, or

(ii) any lecture, address, sermon or other work of the same nature delivered in public, provided that the use is exclusively for the purposes of current information,

the author retaining the right to publish a collection of such works.

Ephemeral Recordings

14. Notwithstanding the provisions of section 10, any broadcasting or television organization may make, for the purpose of its own broadcasts or television broadcasts and by means of its own facilities, an ephemeral recording, in one or several copies, of any work which it is authorized to broadcast or televise. All copies of such recording shall be destroyed within six months of the making thereof or within any longer period agreed to by the author:

Provided, however, that where such recording has an exceptional documentary character, one copy of it may be preserved in official archives, without prejudice to the application of the provisions of section 11.

Limitation of Right of Translation

15. Where any work has not been published in Sinhala or Tamil within ten years from its having been published for the first time in its original language, it shall be lawful to translate the said work into Sinhala or Tamil, as the case may be, and to publish such translation, even without the authorization of, and without any payment to, the owner of the copyright of the work, without prejudice to the application of the provisions of section 11.

Limitation of Right of Sound Recording and Broadcasting

16.—(1) Where the owner of the copyright in a musical work has already authorized a person to make a sound recording of the performance of the work, any other person may, if he cannot agree with the owner to make a sound recording of a performance of the same work, make a new sound recording of a performance of the said work without the authorization of



the owner, provided that such other person pays to the owner an equitable remuneration which amount shall be fixed by the Secretary to the Ministry of the Minister in charge of the subject of Culture. The foregoing provisions shall apply also to any words accompanying the music.

(2) Where any public broadcasting or television organization operating in and from Sri Lanka cannot agree with the owner of the copyright in any work which it wishes to transmit by broadcasting or television on the conditions on which the work may be broadcast or televised, it shall be entitled to proceed to such broadcasting or television even without the authorization of the owner, provided that it pays to the owner an equitable remuneration which amount shall be fixed by the Secretary to the Ministry of the Minister in charge of the subject of Culture.

(3) The provisions of subsections (1) and (2) shall be without prejudice to the application of the provisions of section 11.

(4) The mode and manner of the assessment and payment of remuneration under subsections (1) and (2) shall be as prescribed.

Ownership of Copyright

17.—(1) The rights protected under this Part shall be owned in the first instance by the author or authors who created the work. The authors of a work of joint authorship shall be co-owners of the said rights.

(2) In the absence of proof to the contrary, the author of a work is the person under whose name the work is disclosed.

(3) In the case of a work created by an author for any person or body of persons corporate or unincorporate in the course of his employment under a contract of service, or of a work commissioned from the author by such person or body of persons, the rights mentioned in section 10 shall, in the absence of contractual provisions to the contrary, be deemed to be transferred to the employer or to the person commissioning the work.

Transfer of Copyright

18.—(1) The rights referred to in section 10 shall be transferable in whole or in part.

(2) Any transfer, other than by operation of law, of a right referred to in section 10 shall be in writing signed by the transferor.

(3) A transfer, in whole or in part of any right referred to in section 10, shall not include or be deemed to include the transfer of any other rights referred to therein.

(4) When a contract provides for the total transfer of one of the rights referred to in section 10, the scope of such contract shall be limited to the exercise of such rights as are provided for in the contract.

(5) The transfer of ownership of the only copy or of one or several copies of a work shall not imply or be deemed to imply the transfer of the copyright in the work.



Duration of Economic Rights

19.—(1) Unless expressly provided otherwise in this part, the rights referred to in section 10 shall be protected during the life of the author and for fifty years after his death.

(2) In the case of a work of joint authorship the rights referred to in section 10 shall be protected during the life of the last surviving author and for fifty years after his death.

(3) In the case of a work published anonymously or under a pseudonym, the rights referred to in section 10 shall be protected until the expiration of fifty years from the date on which such work was first lawfully published:

Provided that where, before the expiration of the said period, the author or the author's identity is revealed or is no longer in doubt, the provisions of subsection (1) or subsection (2) shall apply as the case may be.

(4) In the case of a cinematographic, radiophonic or audiovisual work, the rights referred to in section 10 shall be protected until the expiration of fifty years from the making of the work or, if the work is made available to the public during such period with the consent of the author, fifty years from the date of its communication to the public.

(5) In the case of a photographic work or a work of applied art, the rights referred to in section 10 shall be protected until the expiration of twenty-five years from the making of the work.

(6) Every period under the preceding provisions of this section shall run to the end of the calendar year in which it would otherwise expire.

Sound Recording

20.—(1) The lawful maker of any sound recording shall, for a period of fifty years from the first publication of the sound recording, have the exclusive right to reproduce or authorize the reproduction of the sound recording.

(2) The provisions of sections 14, 18, 19 (6), and 21 shall apply to sound recordings.

Infringements and Sanctions

21.—(1) Any person who infringes any of the rights protected under this Part may be prohibited by injunction from continuing such infringement and may also be liable in damages.

(2) The provisions of Chapter XXXII relating to infringements shall apply, *mutatis mutandis*, to the rights protected under this Part.

Fields of Application

22. This Part shall apply to—



- (a) works of authors who are nationals of, or have their habitual residence in, Sri Lanka; and
- (b) works first published in Sri Lanka, irrespective of the nationality or residence of their authors; and
- (c) all works which, by virtue of treaties entered into by Sri Lanka, are to be protected, as well as to works of Sri Lanka folklore.

Abrogation of Common Law Rights

23. No copyright, or right in the nature of copyright, shall subsist otherwise than by virtue of this Part or of any other enactment made in that behalf.

Rights Under Other Laws

24. The provisions of this Part shall not affect any rights hereinbefore acquired under the common law or any other law.

**PART III
INDUSTRIAL DESIGNS**

**Chapter III
Scope of this Part and Definitions**

25. The protection of industrial designs provided under this Part shall be in addition to and not in derogation of any other protection provided under any other written law, in particular under Part II of this Code.

Conditions for Protection

- 26.** The protection provided under this Part shall—
- (1) apply only to new industrial designs;
 - (2) not apply to an industrial design which consists of any scandalous design or is contrary to morality or public order or which, in the opinion of the Director or the Court, is likely to offend the religious or racial susceptibilities of any community.

Definition of Industrial Design

27. For the purposes of this Part any composition of lines or colours or any three dimensional form, whether or not associated with lines or colours, that gives a special appearance to a product of industry or handicraft and is capable of serving as a pattern for a product of industry or handicraft shall be deemed to be an industrial design:



Provided that anything in an industrial design which serves solely to obtain a technical result shall not be protected under this Part.

Definition of Novelty

28.—(1) For the purposes of this Part a new industrial design shall mean an industrial design which had not been made available to the public anywhere and at any time whatsoever through description, use or in any other manner before the date of an application for registration of such industrial design or before the priority date validly claimed in respect thereof.

(2) An industrial design shall not be deemed to have been made available to the public solely by reason of the fact that, within the period of six months preceding the filing of an application for registration, it had appeared in an official or officially recognized international exhibition.

(3) An industrial design shall not be considered a new industrial design solely by reason of the fact that it differs from an earlier industrial design in minor respects or that it concerns a type of product different from a product embodying an earlier industrial design.

Chapter IV **Right to Protection of Industrial Design**

Ownership and Right to Protection of Industrial Design

29.—(1) The right to obtain protection of an industrial design belongs to its owner.

(2) Subject to section 31 the owner of an industrial design is its creator or his successor in title.

(3) Where two or more persons have jointly created an industrial design, the right to obtain protection shall belong to them jointly:

Provided that a person who has merely assisted in the creation of an industrial design but has made no contribution of a creative nature shall not be deemed to be the creator or a co-creator of such industrial design.

(4) Subject to sections 30 and 31 the person who makes the first application for the registration of an industrial design or the person who first validly claims the earliest priority for his application shall be deemed to be the creator of such industrial design.

Usurpation: Judicial Assignment of Application or Registration

30. Where the essential elements of an industrial design, the subject of an application for registration, have been unlawfully derived from an industrial design for which the right to protection belongs to another person, such other person may apply to Court for an order that the said application or registration be assigned to him:



Provided that where, after an application for the registration of an industrial design has been filed, this person to whom the right to protection belongs gives his consent to the filing of the said application, such consent shall, for all purposes, be deemed to have been effective from the date of filing of such application.

Industrial Design Created by an Employee or Pursuant to a Commission

31.—(1) In the absence of any provision to the contrary in any contract of employment or for the execution of work, the ownership of an industrial design created in the performance of such contract or in the execution of such work shall be deemed to accrue to the employer, or the person who commissioned the work, as the case may be:

Provided that where the industrial design acquires an economic value much greater than the parties could reasonably have foreseen at the time of concluding the contract of employment or for the execution of work, as the case may be, the creator shall be entitled to equitable remuneration which may be fixed by the Court in the absence of agreement between the parties.

(2) Where an employee whose contract of employment does not require him to engage in any creative activity creates, in the field of activities of his employer, an industrial design using data or means placed at his disposal by his employer, the ownership of such industrial design shall be deemed to accrue to the employer in the absence of any provision to the contrary in the contract of employment:

Provided that the employee shall be entitled to equitable remuneration which, in the absence of agreement between the parties, may be fixed by the Court taking into account his emoluments, the economic value of the industrial design and any benefit derived from it by the employer.

(3) The rights conferred on the creator of an industrial design by subsections (1) and (2) shall not be restricted by contract.

Naming of Creator of an Industrial Design

32.—(1) The creator of an industrial design shall be named as such in the registration, unless by a declaration in writing signed by him or on his behalf and submitted to the Director he indicates that he does not wish to be so named.

(2) The provisions of subsection (1) shall not be modified by the terms of any contract.

Chapter V
Requirements of Application and Procedure for Registration

Requirements of Application

33.—(1) An application for registration of an industrial design shall be made to the Director in the prescribed form and shall contain—



- (a) a request for registration of the industrial design;
- (b) the name, address and description of the applicant and, if he is resident outside Sri Lanka, a postal address for service in Sri Lanka;
- (c) a specimen of the article embodying the industrial design or copies of a photographic or graphic representation of the industrial design, in colour where it is in colour, or drawings and tracings of the design;
- (d) an indication of the kind of products for which the industrial design is to be used and, where the regulations make provision for classification, an indication of the class or classes in which such products are included;
- (e) a declaration by the applicant that the industrial design is new to the best of his knowledge.
- (2) The application for registration may be accompanied by a declaration signed by the creator of the industrial design giving his name and address and requesting that he be mentioned as such in the registration.
- (3) Where the applicant is not the creator of the industrial design the application shall be accompanied by a statement justifying the applicant's right to obtain registration.
- (4) The Director shall send a copy of the statement referred to in subsection (3) to the creator of the industrial design who shall have the right to inspect the application and to receive, on payment of the prescribed fee, a copy thereof.
- (5) Where the application is filed through an agent, it shall be accompanied by a power of attorney granted to such agent by the applicant:
- Provided that legalization or certification of the applicant's signature shall not be necessary.
- (6) An application may be made for the registration of any number of industrial designs not exceeding fifty provided that they are of the same class or kind.

Right of Priority

34. The applicant for registration of an industrial design who wishes to avail himself of the priority of an earlier application filed in a convention country shall, within six months of the date of such earlier application, append to his application a written declaration indicating the date and number of the earlier application, the name of the applicant and the country in which he or his predecessor in title filed such application and shall, within a period of three months from the date of the later application filed in Sri Lanka, furnish a copy of the earlier application certified as correct by the appropriate authority of the country where such earlier application was filed.



Application Fee

35. An application for registration of an industrial design shall not be entertained unless the prescribed fee has been paid to the Director.

Examination of Application

36.—(1) The Director shall examine whether the application for registration complies with sections 26 (2), 33, 34 (where applicable) and 35.

(2) Where the application does not comply with sections 26 (2), 33 and 35, the Director shall refuse registration of the industrial design:

Provided that the Director shall first notify the applicant of any defect in the application and shall afford him an opportunity to remedy such defect within three months from the date of receipt of such notification.

(3) Where the application does not comply with section 34, the Director shall not, in connection with the registration of the industrial design, make any reference to the priority claimed.

(4) Where the application complies with section 34, the Director shall, in connection with the registration of the industrial design, record the priority claimed.

(5) Where the Director refuses to register an industrial design he shall, if required by the applicant, state in writing the grounds of his decision.

Registration

37. Where the application complies with sections 26 (2), 33 and 35, the industrial design shall, notwithstanding the provisions of section 26 (1), be registered without further examination.

Issue of Certificate of Registration

38. Upon the registration of an industrial design, the Director shall issue to the registered owner thereof a certificate of registration and shall, at the request of the registered owner, send such certificate to him by registered post at his last recorded postal address in Sri Lanka or, if he is resident outside Sri Lanka, to his last recorded postal address for service in Sri Lanka.

Register of Industrial Designs

39.—(1) The Director shall keep and maintain a register called the Register of Industrial Designs wherein shall be recorded, in the order of their registration, all registered industrial designs and such other particulars relating to industrial designs as are authorized or directed by this Part to be so recorded or may from time to time be prescribed.



(2) The registration of an industrial design shall include a representation of the industrial design and shall specify its number, the name and address of the registered owner and, if the registered owner is resident outside Sri Lanka, a postal address for service in Sri Lanka; the dates of application and registration; if priority is validly claimed, an indication of that fact and the number, date and country of the application on the basis of which the priority is claimed; the kinds and classes of products referred to in section 33 (1) (d), and the name and address of the creator of the industrial design, if he has requested that he be mentioned as such in the registration.

Examination of Register and Certified Copies

40. Any person may examine the register and may obtain certified extracts therefrom on payment of the prescribed fee.

Publication of Registered Industrial Designs

41. The Director shall cause to be published in the *Gazette*, in the prescribed form, all registered industrial designs in the order of their registration, including in respect of each industrial design so published reference to such particulars as may be prescribed.

Chapter VI Duration of Registration

Duration of Registration

42. Subject and without prejudice to other provisions of this Part, registration of an industrial design shall expire five years after the date of receipt of the application for registration.

Renewal

43.—(1) Registration of an industrial design may be renewed for two consecutive periods of five years each on payment of the prescribed fee.

(2) The renewal fee shall be paid within the twelve months preceding the date of expiration of the period of registration:

Provided, however, that a period of grace of six months shall be allowed for the payment of the fee after the date of such expiration, upon payment of such surcharge as may be prescribed.

(3) The Director shall record in the register and cause to be published in the *Gazette* in the prescribed form all renewals of registration.



(4) Where the renewal fee has not been paid within such period or such extended period specified in subsection (2), the Director shall remove the registration of the industrial design from the register.

Chapter VII **Rights of Registered Owner of Industrial Design**

Rights of Registered Owner of Industrial Design

44.—(1) Subject and without prejudice to other provisions of this Part, the registered owner of an industrial design shall have the following exclusive rights in relation to the industrial design:—

- (a) to reproduce and embody such industrial design in making a product;
- (b) to import, offer for sale, sell or use a product embodying such industrial design;
- (c) to stock, for the purpose of offering for sale, selling or using, a product embodying such industrial design;
- (d) to assign or transmit the registration of the industrial design;
- (e) to conclude licence contracts.

(2) No person shall do any of the acts referred to in subsection (1) without the consent of the registered owner of the industrial design.

(3) The acts referred to in subsection (1), if done by any unauthorized person, shall not be lawful solely by reason of the fact that the reproduction of the registered industrial design differs from the registered industrial design in minor respects or that the reproduction of the registered industrial design is embodied in a type of product different from a product embodying the registered industrial design.

Limitation of Registered Owner's Rights

45. The provisions of section 44 (1) shall—

- (1) extend only to acts done for industrial or commercial purposes;
- (2) not preclude third parties from doing any of the acts referred to therein in respect of a product embodying the registered industrial design after the said product has been lawfully manufactured, imported, offered for sale, sold, used or stocked in Sri Lanka.

Chapter VIII

Assignment and Transmission of Applications and Registrations

Assignment and Transmission of Applications and Registrations

46.—(1) An application for registration or the registration of an industrial design may be assigned or transmitted.

(2) Any person becoming entitled by assignment or transmission to an application for registration or the registration of an industrial design may apply to the Director in the prescribed manner to have such assignment or transmission recorded in the register.

(3) No such assignment or transmission shall be recorded in the register unless—

(a) the prescribed fee has been paid to the Director;

(b) in the case of an assignment, it is in writing signed by or on behalf of the contracting parties.

(4) No such assignment or transmission shall have effect against third parties unless so recorded in the register.

Joint Ownership of Applications and Registration

47. In the absence of any agreement to the contrary between the parties, joint owners of an application for registration or the registration of an industrial design may, separately, assign or transmit their rights in the application or registration, use the industrial design and exercise the exclusive rights referred to in section 44 (1) (a) to (c), but may only jointly withdraw the application, renounce the registration or conclude a licence contract.

Chapter IX

Licence Contracts

Interpretation

48. For the purposes of this Part licence contract means any contract by which the registered owner of an industrial design (“the licensor”) grants to another person or enterprise (“the licensee”) a licence to do any or all of the acts referred to in section 44 (1) (a) to (c).

Form and Record of Licence Contract

49.—(1) A licence contract shall be in writing signed by or on behalf of the contracting parties.

(2) Upon a request in writing signed by or on behalf of the contracting parties, the Director shall on payment of the prescribed fee, record in the register such particulars relating to the contract as the parties thereto might wish to have recorded:



Provided that the parties shall not be required to disclose or have recorded any other particulars relating to the said contract.

Rights of Licensee

50.—(1) In the absence of any provision to the contrary in the licence contract, the licensee shall—

(a) be entitled to do any or all of the acts referred to in section 44 (1) (a) to (c) within the whole geographical area of Sri Lanka, during the whole period of registration of the industrial design, including renewals, and through any application of the industrial design;

(b) not be entitled to assign or transmit his rights under the licence contract or grant sub-licenses to third parties.

The provisions of this Chapter shall apply, *mutatis mutandis*, to assignments and sub-licenses.

Rights of Licensor

51.—(1) In the absence of any provision to the contrary in the licence contract, the licensor may grant further licences to third parties in respect of the same industrial design or himself do any or all of the acts referred to in section 44 (1) (a) to (c).

(2) Where the licence contract provides that the licence is exclusive, and unless it is expressly provided otherwise in such contract, the licensor shall not grant further licences to third parties in respect of the same industrial design or himself do any of the acts referred to in section 44 (1) (a) to (c).

Invalid Clauses in Licence Contracts

52. Any clause or condition in a licence contract shall be null and void in so far as it imposes upon the licensee, in the industrial or commercial field, restrictions not derived from the rights conferred by this Part on the registered owner of an industrial design, or unnecessary for the safeguarding of such rights:

Provided that—

(a) restrictions concerning the scope, extent, or duration of use of the industrial design, or the geographical area in or the quality or quantity of the products in connection with which the industrial design may be used, and

(b) obligations imposed upon the licensee to abstain from all acts capable of prejudicing the validity of the registration of the industrial design.

shall not be deemed to constitute such restrictions.

Effect of Nullity of Registration of Licence Contract

53. Where, before the expiration of the licence contract, the registration is declared null and void the licensee shall no longer be required to make any payment to the licensor under the licence contract, and shall be entitled to repayment of the payments already made:

Provided that the licensor shall not be required to make any repayment, or shall be required to make repayment only in part, to the extent that he can prove that any such repayment would be inequitable under all the circumstances, in particular if the licensee has effectively profited from the licence.

Expiry, Termination or Invalidation of Licence Contract

54. The Director shall—

(1) if he is satisfied that a recorded licence contract has expired or been terminated, record that fact in the register upon a request in writing to that effect signed by or on behalf of the parties thereto;

(2) record in the register the expiry, termination or invalidation of a licence contract under any provision of this Part.

Licence Contracts Involving Payments Abroad

55.—(1) Where the Director has reasonable cause to believe that any licence contract or any amendment or renewal thereof—

(a) which involves the payment of royalties abroad; or

(b) which by reason of other circumstances relating to such licence contract,

is detrimental to the economic development of Sri Lanka he shall in writing communicate such fact to the Governor of the Central Bank and transmit all papers in his custody relevant to a decision on such matter to the Governor of the Central Bank.

(2) Where the Governor of the Central Bank on receipt of any communication under subsection (1) informs the Director in writing that the said licence contract or any amendment or renewal thereof is detrimental to the economic development of Sri Lanka the Director shall cancel and invalidate the record of such contract in the register.

Chapter X Renunciation and Nullity of Registration

Renunciation of Registration

56.—(1) The registered owner of an industrial design may renounce the registration by a declaration in writing signed by him or on his behalf and submitted to the Director.



(2) The Director shall, on receipt of the said declaration, record it in the register and cause such record to be published in the *Gazette*.

(3) The renunciation shall take effect from the date that The Director receives the said declaration.

(4) Where a licence contract in respect of an industrial design is recorded in the register the director shall not, in the absence of provision to the contrary in such licence contract, accept or record the said renunciation except upon receipt of a signed declaration by which every licensee or sub-licensee on record consents to the said renunciation, unless the requirement of his consent is expressly waived in the licence contract.

Nullity of Registration

57.—(1) The Court may on the application of any person showing a legitimate interest, or of any competent authority including the Director, to which the registered owner of the industrial design and every assignee licensee or sub-licensee on record shall be made party, declare the registration of the industrial design null and void on any one or more of the following grounds:—

(a) that the provisions of sections 26, 27 and 28 have not been satisfied:

Provided, however, that the grounds of nullity referred to in section 26 (2) shall not be taken into account if they do not exist at the date of the application to Court;

(b) that the identical industrial design has been previously registered upon a prior application or has been conferred earlier priority by virtue of an application in that behalf upon the ground of prior registration in another country;

(c) that the essential elements of the registered industrial design have been unlawfully derived from the creation of another person within the meaning of section 30.

(2) Where an application under subsection (1) relates to several industrial designs, included in the registration and the ground or grounds for nullity apply to some but not to all such industrial designs, the Court shall declare such registration null and void in so far as it relates to the industrial design in respect of which the ground or grounds for nullity apply.

Date and Effect of Nullity

58.—(1) Upon a final decision of the Court declaring total or partial nullity of the registration of an industrial design, the registration shall be deemed to have been null and void totally or partially, as the case may be, from the date of such registration.

(2) When a declaration of nullity becomes final the Registrar of the Court shall notify the Director who shall record the said declaration in the register and cause it to be published in the *Gazette*.



PART IV
PATENTS

Chapter XI
Definitions

Definition of Invention

59.—(1) For the purposes of this Part, “invention” means an idea of an inventor which permits in practice the solution to a specific problem in the field of technology.

(2) An invention may be, or may relate to, a product or process.

(3) The following, notwithstanding they are inventions within the meaning of subsection (1), shall not be patentable—

(a) discoveries, scientific theories and mathematical methods;

(b) plant or animal varieties or essentially biological processes for the production of plants or animals, other than micro-biological processes and the products or such processes;

(c) schemes, rules, or methods for doing business, performing purely mental acts or playing games;

(d) methods for the treatment of the human or animal body by surgery or therapy, and diagnostic methods practised on the human or animal body:

Provided, however, that this paragraph shall not apply to the products used in any such methods.

Patentable Inventions

60. An invention is patentable if it is new, involves an inventive step and is industrially applicable.

Novelty

61.—(1) An invention is new if it is not anticipated by prior art.

(2) Prior art shall consist of—

(a) everything disclosed to the public, anywhere in the world, by written publication or, in Sri Lanka, by oral disclosure, by use or in any other way, prior to the filing or, where appropriate, priority date of the patent application claiming the invention;

(b) the contents of a domestic patent application having an earlier filing or, where appropriate, priority date than the patent application referred to in paragraph (a), to the extent that such contents are included in the patent granted on the basis of the said domestic patent application.



(3) A disclosure made under subsection (2) (a) shall be disregarded—

(a) if such disclosure occurred within one year preceding the date of the patent application and if such disclosure was by reason or in consequence of acts committed by the applicant or his predecessor in title;

(b) if such disclosure occurred within six months preceding the date of the patent application and if such disclosure was by reason or in consequence of any abuse of the rights of the applicant or his predecessor in title.

Inventions Step

62. An invention shall be considered as involving an inventive step if, having regard to the prior art relevant to the patent application claiming the invention, such inventive step would not have been obvious to a person having ordinary skill in the art.

Industrial Application

63. An invention shall be considered industrially applicable if it can be made or used in any kind of industry.

Chapter XII Right to a Patent

Right to a Patent

64.—(1) Subject to section 65 the right to a patent shall belong to the inventor.

(2) Where two or more persons have jointly made an invention, the right to a patent shall belong to them jointly.

Usurpation Assignment of Patent Application or Patent

65. Where the essential elements of the invention claimed in a patent application or patent have been unjudicial lawfully derived from an invention for which the right to the patent belongs to another person, such other person may apply to the Court for an order that the said patent application or patent be assigned to him:

Provided that where, after a patent application has been filed, the person to whom the right to the patent belongs gives his consent to the filing of the said patent application, such consent shall, for all purposes, be deemed to have been effective from the date of filing of such application:

Provided also that the Court shall not entertain an application for the assignment of a patent after five years from the date of grant of the patent.



Inventions Made by an Employee or Pursuant to a Commission

66.—(1) In the absence of any provision to the contrary in any contract of employment or for the execution of work, the right to a patent for an invention made in the performance of such contract of employment or in the execution of such work shall be deemed to accrue to the employer, or the person who commissioned the work, as the case may be:

Provided that where the invention acquires an economic value much greater than the parties could reasonably have foreseen at the time of concluding the contract of employment or for the execution of work, as the case may be, the inventor shall be entitled to equitable remuneration which may be fixed by the Court in the absence of agreement between the parties.

(2) Where an employee whose contract of employment does not require him to engage in any inventive activity makes, in the field of activities of his employer, an invention using data or means placed at his disposal by his employer, the right to the patent for such invention shall be deemed to accrue to the employer, in the absence of any provision to the contrary in the contract of employment:

Provided that the employee shall be entitled to equitable remuneration which, in the absence of agreement between the parties, may be fixed by the Court taking into account his emoluments, the economic value of the invention and any benefit derived from it by the employer.

(3) The rights conferred on the inventor under subsections (1) and (2) shall not be restricted by contract.

Naming of Inventor

67.—(1) The inventor shall be named as such in the patent, unless by a declaration in writing signed by him or on his behalf and submitted to the Director he indicates that he does not wish to be so named.

(2) The provisions of subsection (1) shall not be modified by the terms of any contract.

Chapter XIII
Requirements of Application and Procedure for Grant

Requirements of Application

68.—(1)(a) An application for the grant of a patent shall be made to the Director in the prescribed form and shall contain—

- (i) a request for the grant of the patent;
- (ii) a description;
- (iii) a claim or claims;



(iv) a drawing or drawings, where required;

(v) an abstract.

(b) Where the applicant's ordinary residence or principal place of business is outside Sri Lanka, he shall be represented by an agent resident in Sri Lanka whose name and address shall be given in the application, and the application shall be accompanied by a power of attorney granted to such agent by the applicant:

Provided that legalization or certification of the applicant's signature shall not be necessary.

(a) The application may be accompanied by a declaration signed by the inventor, giving his name and address and requesting that he be named as such in the patent.

(2)(a) The request shall contain—

(i) a petition that the patent be granted;

(ii) the title of the invention;

(iii) the name, address, description and any other prescribed information concerning the applicant, the inventor and the agent, if any.

(b) Where the applicant is not the inventor, the request shall be accompanied by a statement justifying the applicant's right to the patent.

(c) The Director shall send a copy of the statement referred to in paragraph (b) to the inventor who shall have the right to inspect the application and to receive, on payment of the prescribed fee, a copy thereof.

(3) The description shall disclose the invention in a manner sufficiently clear and complete for the invention to be evaluated, and to be carried out by a person having ordinary skill in the art, and shall, in particular, indicate the best mode known to the applicant for carrying out the invention.

(4) The claim or claims shall be clear, concise and supported by the description.

(5) Drawings shall be required when they are necessary for the understanding of the invention.

(6) The terms of the claim or claims shall determine the scope and extent of the protection afforded by the patent, and the description and drawings may be used to interpret the claim or claims.

(7) The abstract shall serve the purpose of technical information and shall not be used for the purpose of determining or interpreting the scope and extent of the protection afforded by the patent.



Application Fee

69. An application for the grant of a patent shall not be entertained unless the prescribed fee has been paid to the Director.

Search Report

70.—(1) Every applicant shall furnish, within the prescribed period, a report, which if not in English shall be accompanied by a translation thereof in English, of an international type search as may be prescribed:

Provided, however, that in lieu of the said international type search an applicant may request the Director to refer the application to a local examiner who shall examine the application on the basis of the claim or claims, with due regard to the description and the drawings, if any, and furnish a report to the Director, within the prescribed period, on the relevant prior art, after endeavouring to discover as much of the relevant prior art as facilities permit; and for this purpose the local examiner shall in any case consult all documentation on prior art available to him.

(2) The applicant shall, in the event of his requesting the Director to refer his application to a local examiner, forward the prescribed fee to the Director.

(3) In this section “local examiner” means any skilled person or persons to whom the Director may refer questions concerning patents.

Unity of Invention

71. An application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

Amendment and Division of Application

72.—(1) An applicant may amend the application provided that the amendment shall not go beyond the disclosure in the initial application.

(2)(a) An applicant may divide the application into two or more applications (“divisional applications”) provided that each divisional application shall not go beyond the disclosure in the initial application.

(b) Each divisional application shall be entitled to the filing or, where applicable, priority date of the initial application.

Right of Priority

73.—(1) An application may contain a declaration claiming the priority, pursuant to the Convention, of one or more earlier national, regional or international applications filed by the applicant or his predecessor in title in or for any State party to the said Convention.



(2) Where the application contains a declaration under subsection (1), the Director may require that the applicant furnish, within the prescribed time, a copy of the earlier application, certified as correct by the Office with which it was filed or, where the earlier application is an international application filed under the Patent Cooperation Treaty, by the International Bureau of the World Intellectual Property Organization.

(3) The effect of the declaration referred to in subsection (1) shall be as provided in the Convention referred to therein.

(4) Where any of the requirements of this section or any regulations pertaining thereto have not been complied with the declaration referred to in subsection (1) shall be deemed to be null and void.

Filing Date

74.—(1) The Director shall record as the filing date the date of receipt of the application:

Provided that the application contains—

- (a) the name and address of the applicant;
- (b) the name and address of the inventor and, where the applicant is not the inventor, the statement referred to in section 68 (2) (b);
- (c) a description;
- (d) a claim or claims:

Provided also that at the time of receipt of the application the prescribed fee has been paid.

(2) Where the Director finds that, at the time of receipt of the application, the provisions of subsection (1) are not fulfilled, he shall request the applicant to file the required correction.

(3) Where the applicant complies with the request referred to in subsection (2), the Director shall record as the filing date the date of receipt of the required correction; where the applicant does not so comply the Director shall treat the application as null and void.

(4) Where the application refers to drawings which in fact are not included in the application, the Director shall request the applicant to furnish the missing drawings.

(5) Where the applicant complies with the request referred to in subsection (4), the Director shall record as the filing date the date of receipt of the missing drawings; where the applicant does not so comply the Director shall record as the filing date the date of receipt of the application and shall make no reference to the said drawings.

Examination

75.—(1) The Director shall examine the application and shall be satisfied that the following conditions are fulfilled—

- (a) where applicable, the requirements of section 68 (1) (b);
- (b) the request complies with the requirements of section 68 (2) (a);
- (c) where applicable, the requirements of section 68 (2) (b);
- (d) the description, the claims and, where applicable, the drawings comply with the prescribed requirements;
- (e) the application contains an abstract;
- (f) the search report referred to in section 70 has been submitted.

(2) Where the Director finds that the conditions referred to in subsection (1) are not fulfilled he shall request the applicant to file the required correction; where the applicant does not so comply the application shall, subject to the provisions of subsection (3), be rejected.

(3) Where no abstract is provided in response to a request under subsection (2), the Director shall, on payment of the prescribed fee within the prescribed period, prepare the abstract; where the prescribed fee is not paid within the prescribed period the application shall be rejected.

(4) The Director shall notify the applicant of any decision under subsections (2) and (3), and any decision rejecting the application shall be in writing and state the reasons for such rejection.

Grant of Patent

76.—(1) The grant of a patent shall not be refused and a patent shall not be invalidated on the ground that the performance of any act in respect of the claimed invention is prohibited by any law or regulation, except where the performance of that act would be contrary to public order.

(2) Where the Director is satisfied that the application complies with section 75 (1) he shall grant the patent, and shall forthwith—

(a) issue to the applicant a certificate of the grant of the patent and a copy of the patent together with a copy of the search report; and

(b) record the patent in the register.

(3) As soon as possible thereafter the Director shall—

(a) cause to be published in the *Gazette* a reference to the grant of the patent;



(b) make available to the public, on payment of the prescribed fee, copies of the patent together with copies of the search report.

(4) The patent shall be deemed to be granted on the date that the Director performs the acts referred to in subsection (2).

Register of Patents

77. The Director shall keep and maintain a register called the Register of Patents wherein all patents shall be recorded, in the order of their grant, specifying the number of the patent, the name and address of the grantee and, if the grantee is resident outside Sri Lanka, a postal address for service in Sri Lanka; the dates of application and grant; any change in the ownership of a patent application or patent; the amendment or division of a patent application; the assignment or transmission of a patent application or patent; any valid claim to priority; the surrender or revocation of a patent and such other matters relating to patents as are authorized or directed by this Part to be so recorded or may from time to time be prescribed.

Examination of Register and Certified Copies

78. Any person may examine the register and may obtain certified extracts therefrom on payment of the prescribed fee.

Inspection of Files

79.—(1) Any person may, after the grant of a patent, inspect the file relating to the patent and, subject to subsection (2), the file relating to any patent application, and may obtain certified extracts therefrom on payment of the prescribed fee.

(2) The file relating to a patent application may be inspected before the grant of the patent only with the written permission of the applicant:

Provided that before the grant of the patent the Director may divulge the following information to any person:—

(a) the name, address and description of the applicant and the name and address of the agent, if any;

(b) the number of the application;

(c) the filing date of the application and, if priority is claimed, the priority date, the number of the earlier application and the name of the State in which the earlier application was filed or, where the earlier application is a regional or an international application, the name of the State or States for which and the Office with which it was filed;

(d) the title of the invention;

(e) any change in the ownership of the application and any reference to a licence contract appearing in the file relating to the application.

(3) No person employed in or at the Registry may make a patent application or be granted a patent or acquire or hold in any manner whatsoever any rights relating to a patent during the period of his employment in or at the Registry and for one year after the termination of such employment.

Chapter XIV

Duration of Patent

Duration of Patent

80.—(1) Subject and without prejudice to other provisions of this Part a patent shall expire fifteen years after the date of its grant.

(2) Where a patentee intends at the expiration of the second year from the date of grant of the patent to keep the same in force he shall, twelve months before the date of expiration of the second and each succeeding year during the term of the patent, pay the prescribed annual fee:

Provided, however, that a period of grace of six months shall be allowed after the date of such expiration, upon payment of such surcharge as may be prescribed:

Provided also that the patentee may pay in advance the whole or any portion of the aggregate of the prescribed annual fees.

Chapter XV

Rights of Owner of Patent

Rights of Owner of Patent

81.—(1) Subject and without prejudice to other provisions of this Part, the owner of a patent shall have the following exclusive rights in relation to the patented—

- (a) to exploit the patent invention;
- (b) to assign or transmit the patent;
- (c) to conclude licence contracts.

(2) No person shall do any of the acts referred to in subsection (1) without the consent of the owner of the patent.

(3) For the purposes of this Part “exploitation” of a patented invention means any of the following acts in relation to a patent:—

- (a) when the patent has been granted in respect of a product—



- (i) making, importing, offering for sale, selling and using the product;
- (ii) stocking such product for the purpose of offering for sale, selling or using;
- (b) when the patent has been granted in respect of a process—
 - (i) using the process;
 - (ii) doing any of the acts referred to in paragraph (a), in respect of a product obtained directly by means of the process.

Limitation of Owner's Rights

82. The provisions of section 81 shall—

- (1) extend only to acts done for industrial or commercial purposes and in particular not to acts done only for scientific research;
- (2) not preclude a person having the rights referred to in section 83 or a licensee from exploiting the patented invention;
- (3) not extend to the presence or use of products on foreign vessels, aircraft, spacecraft, or land vehicles which temporarily or accidentally enter the waters, airspace or territory of Sri Lanka.

Rights Derived from Prior Manufacture or Use

83.—(1) Where a person at the filing or, where applicable, the priority date of the patent application—

(a) was in good faith in Sri Lanka making the product or using the process which is the subject of the invention claimed in such application;

(b) had in good faith in Sri Lanka made serious preparations toward the making of the product or using the process referred to in paragraph (a),

he shall have the right, despite the grant of the patent, to exploit the patented invention:

Provided that the product in question is made, or the process in question is used by the said person in Sri Lanka:

Provided further than he can prove, if the invention was disclosed under the circumstances referred to in section 61 (3) (a) or (b), that his knowledge of the invention was not a result of such disclosure.

(2) The right referred to in subsection (1) shall not be assigned or transmitted except as part of the business of the person concerned.



Chapter XVI Assignment and Transmission of Patent Applications and Patents

Assignment and Transmission of Patent Applications and Patents

84.—(1) A patent application or patent may be assigned or transmitted.

(2) Any person becoming entitled by assignment or transmission to a patent application or patent may apply to the Director in the prescribed manner to have such assignment or transmission recorded in the register.

(3) No such assignment or transmission shall be recorded in the register unless—

(a) the prescribed fee has been paid to the Director;

(b) in the case of an assignment, it is in writing signed by or on behalf of the contracting parties.

(4) No such assignment or transmission shall have effect against third parties unless so recorded in the register.

Joint Ownership of Patent Applications or Patents

85. In the absence of any agreement to the contrary between the parties, joint owners of a patent application or patent may, separately, assign or transmit their rights in the patent application or patent, exploit the patented invention and take action against any person exploiting the patented invention without their consent, but may only jointly withdraw the patent application, surrender the patent or conclude a licence contract.

Chapter XVII Licence Contracts

Interpretation

86. For the purposes of this Part licence contract means any contract by which the owner of a patent (“the licensor”) grants to another person or enterprise (“the licensee”) a licence to do any or all of the acts referred to in section 81 (1) (a) and (3).

Form and Record of Licence Contract

87.—(1) A licence contract shall be in writing signed by or on behalf of the contracting parties.

(2) Upon a request in writing signed by or on behalf of the contracting parties, the Director shall, on payment of the prescribed fee, record in the register such particulars relating to the contract as the parties thereto might wish to have recorded:



Provided that the parties shall not be required to disclose or have recorded any other particulars relating to the said contract.

Rights of Licensee

88.—(1) In the absence of any provision to the contrary in the licence contract, the licence shall—

(a) be entitled to do any or all of the acts referred to in section 81 (1) (a) and (3) within the whole geographical area of Sri Lanka, without limitation as to time and through any application of the patented invention;

(b) not be entitled to assign or transmit his rights under the licence contract or grant sub-licences to third parties.

(2) The provisions of this Chapter shall apply, *mutatis mutandis*, to assignments and sub-licences.

Rights of the Licensor

89.—(1) In the absence of any provision to the contrary in the licence contract, the licensor may grant further licences to third parties in respect of the same patent or himself do any or all of the acts referred to in section 81 (1) (a) and (3).

(2) Where the licence contract provides that the licence is exclusive, and unless it is expressly provided otherwise in such contract, the licensor shall not grant further licences to third parties in respect of the same patent or himself do any of the acts referred to in section 81 (1) (a) and (3).

Invalid Clauses in Licence Contracts

90. Any clause or condition in a licence contract shall be null and void in so far as it imposes upon the licensee, in the industrial or commercial field, restrictions not derived from the rights conferred by this Part on the owner of the patent, or unnecessary for the safeguarding of such rights:

Provided that—

(a) restrictions concerning the scope, extent or duration of exploitation of the patented invention, or the geographical area in or the quality or quantity of the products in connection with which the patented invention may be exploited; and

(b) obligations imposed upon the licensee to abstain from all acts capable of prejudicing the validity of the patent,

shall not be deemed to constitute such restrictions.



Effect of Patent Application not Being Granted or Patent Being Declared Null and Void

91. Where, before the expiration of the licence contract, any of the following events occur in respect of the patent application or patent referred to in such contract—

- (a) the patent application is withdrawn;
- (b) the patent application is finally rejected;
- (c) the patent is surrendered;
- (d) the patent is declared null and void; or
- (e) the registration of the licence contract is invalidated,

the licensee shall no longer be required to make any payment to the licensor under the licence contract, and shall be entitled to repayment of the payments already made:

Provided that the licensor shall not be required to make any repayment, or shall be required to make repayment only in part, to the extent that he can prove that any such re-payment would be inequitable under all the circumstances, in particular if the licensee has effectively profited from the licence.

Expiry Termination, or Invalidation of Licence Contract

92. The Director shall—

(a) if he is satisfied that a recorded licence contract has expired or been terminated, record that fact in the register upon a request in writing to that effect signed by or on behalf of the parties thereto;

(b) record in the register the expiry, termination or invalidation of a licence contract under any provision of this Part.

Licence Contracts Involving Payments Abroad

93.—(1) Where the Director has reasonable cause to believe that any licence contract or any amendment or renewal thereof—

- (a) which involves the payment of royalties abroad; or
- (b) which by reason of other circumstances relating to such licence contract,

is detrimental to the economic development of Sri Lanka, he shall in writing communicate such fact to the Governor of the Central Bank and transmit all papers in his custody relevant to a decision on such matter to the Governor of the Central Bank.

(2) Where the Governor of the Central Bank on receipt of any communication under subsection (1) informs the Director in writing that the said licence contract or any amendment or renewal thereof is detrimental to the economic development of Sri Lanka the Director shall cancel and invalidate the record of such contract in the register.



Chapter XVIII Surrender and Nullity of Patent

Surrender of Patent

94.—(1) The registered owner of a patent may surrender the patent by a declaration in writing signed by him or on his behalf and submitted to the Director.

(2) The surrender may be limited to one or more claims of the patent.

(3) The Director shall, on receipt of the said declaration record it in the register and cause such record to be published in the *Gazette*.

(4) The surrender shall take effect from the date that the Director receives the said declaration.

(5) Where a licence contract in respect of a patent is recorded in the register, the Director shall not, in the absence of provision to the contrary in such licence contract, accept or record the said surrender except upon receipt of a signed declaration by which every licensee or sub-licensee on record consents to the said surrender, unless the requirement of his consent is expressly waived in the licence contract.

Nullity of Patent

95.—(1) The Court may on the application of any person showing a legitimate interest, or of any competent authority including the Director, to which the owner of the patent and every assignee, licensee or sub-licensee on record shall be made party, declare the patent null and void on any one or more of the following grounds:—

(a) that what is claimed as an invention in the patent is not an invention within the meaning of section 59 (1), or is excluded from protection under section 59 (3) or section 76 (1) or is not patentable because it does not comply with the requirements of sections 60 to 63; or

(b) that the description or the claims do not comply with the requirements of section 68 (3) and (4); or

(c) that any drawings which are necessary for the understanding of the claimed invention have not been furnished; or

(d) that the right to the patent does not belong to the person to whom the patent was granted:

Provided that the patent has not been assigned to the person to whom the right to the patent belongs.

(2)(a) Where the provisions of subsection (1) apply only to some of the claims or some parts of a claim, such claims or parts of a claim may be declared null and void by the court.



(b) The nullity of part of a claim shall be declared in the form of a corresponding limitation of the claim in question.

(3)(a) An assignee, licensee or sub-licensee, as the case may be, who has been made party to the application under subsection (1) shall be entitled to join in the proceedings in the absence of any provision to the contrary in any contract or agreement with the owner of the patent.

(b) Where the application to Court is on the ground referred to in subsection (1) (d), the applicant shall give notice of the application to the person to whom the right to the patent is alleged to belong.

Date and Effect of Nullity

96.—(1) Upon a final decision of the Court declaring total or partial nullity of a patent, the patent shall be deemed to have been null and void totally or partially, as the case may be, from the date of the grant of the patent.

(2) When a declaration of nullity becomes final the Registrar of the Court shall notify the Director who shall record the said declaration in the register and cause it to be published in the *Gazette*.

PART V MARKS, TRADE NAMES AND UNFAIR COMPETITION

Chapter XIX Definitions

Definitions

97. For the purposes of this Part, unless the context otherwise requires—

“appellation of origin” means the geographical name of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors;

“collective mark” means any visible sign designated as such and serving to distinguish the origin or any other common characteristic of goods or services of different enterprises which use the mark under the control of the registered owner;

“enterprise” means any business, industry or other activity carried on by an individual, partnership, company, or cooperative society wherever registered or incorporated and whether registered or not under any law for the time being in force relating to companies, cooperative societies or businesses engaged in or proposing to engage in any business and includes any business undertaking of the Government or any State corporation whether carrying on business in Sri Lanka or otherwise;



“false trade description” means a trade description which is false or misleading in a material respect as regards the goods or services to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, where that alteration makes the description false or misleading in a material respect, and the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false trade description within the meaning of this Part;

“goods” means anything which is the subject of trade, manufacture or merchandise and includes services;

“indication of source” means any expression or sign used to indicate that a product or service originates in a given country or group of countries, region, or locality;

“mark” means a trade mark or service mark;

“name” includes any abbreviation of a name;

“person”, “manufacturer, dealer, or trader”, and “owner” include any body of persons corporate or unincorporate;

“service mark” means any visible sign serving to distinguish the services of one enterprise from those of other enterprises;

“trade description” means any description, statement or other indication, direct or indirect—

- (a) as to the number, quantity, measure, gauge, or weight of any goods; or
- (b) as to the place or country in which any goods were made or produced; or
- (c) as to the mode of manufacturing or producing any goods; or
- (d) as to the material of which any goods are composed; or
- (e) as to any goods being the subject of an existing copyright, industrial design or patent; or
- (f) as to the quality, kind or nature of the services; or
- (g) as to the standard of quality of any goods according to a classification commonly used or recognized in the trade; or
- (h) as to the fitness for purpose, strength, performance or behaviour of any goods,

and the use of any figure, word or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters, shall be deemed to be a trade description within the meaning of this Part;

“trade mark” means any visible sign serving to distinguish the goods of one enterprise from those of other enterprises; and



“trade name” means the name or designation identifying the enterprise of a natural or legal person.

Chapter XX Admissibility of Marks

Admissibility of Marks

98.—(1) The exclusive right to a mark conferred by this Part shall be acquired, subject to the following provisions, by registration.

(2) Registration of a mark may be granted only to the person who has first fulfilled the conditions for valid application or who is the first validly to claim the earliest priority for his application.

(3) Provided that they are not inadmissible under sections 99 and 100 marks may consist, in particular, of arbitrary or fanciful designations, names, pseudonyms, geographical names, slogans, devices, reliefs, letters, numbers, labels, envelopes, emblems, prints, stamps, seals, vignettes, selvages, borders and edgings, combinations or arrangements of colours and shapes of goods or containers.

Marks Inadmissible on Objective Grounds

99.—(1) A mark shall not be registered—

(a) which consists of shapes or forms imposed by the inherent nature of the goods or services or by their industrial function;

(b) which consists exclusively of a sign or indication which may serve, in the course of trade, to designate the kind, quality, quantity, intended purpose, value, place of origin or time of production, or of supply, of the goods or services concerned;

(c) which consists exclusively of a sign or indication which has become, in the current language or in the *bona fide* and established practices of the trade of Sri Lanka, a customary designation of the goods or services concerned;

(d) which, for other reasons, is incapable of distinguishing the goods or services of one enterprise from those of other enterprises;

(e) which consists of any scandalous design or is contrary to morality or public order or which, in the opinion of the Director or the Court, is likely to offend the religious or racial susceptibilities of any community;

(f) which is likely to mislead trade circles or the public as to the nature, the source, the manufacturing process, the characteristics, or the suitability for their purpose, of the goods or services concerned;



(g) which does not represent in a special or particular manner the name of an individual or enterprise;

(h) which is, according to its ordinary signification, a geographical name or surname;

(i) which reproduces or imitates armorial bearings, flags or other emblems, initials, names or abbreviated names of any State or any inter-governmental international organization or any organization created by international convention, unless authorized by the competent authority of that State or international organization;

(j) which reproduces or imitates official signs or hallmarks of a State, unless authorized by the competent authority of that State;

(k) which resembles in such a way as to be likely to mislead the public, a mark or a collective mark the registration of which has expired and has not been renewed or where its renunciation, removal or nullity has been recorded in the register during a period of two years preceding the filing of the mark in question;

(l) which consists of any other words or definitions as may be prescribed.

(2) The Director shall in applying the provisions of paragraphs (b), (c), (d), (f), (g) and (h), of subsection (1), have regard to all the factual circumstances and, in particular, the length of time the mark has been in use in Sri Lanka or in other countries and the fact that the mark is held to be distinctive in other countries or in trade circles.

Marks Inadmissible by Reason of Third-Party Rights

100.—(1) A mark shall not be registered—

(a) which resembles, in such a way as to be likely to mislead the public, a mark already validly filed or registered by a third party, or subsequently filed by a person validly claiming priority in respect of the same goods or services or of other goods or services in connection with which use of such mark may be likely to mislead the public;

(b) which resembles, in such a way as to be likely to mislead the public, an unregistered mark used earlier in Sri Lanka by a third party in connection with identical or similar goods or services, if the applicant is aware, or could not have been unaware, of such use;

(c) which resembles, in such a way as to be likely to mislead the public, a trade name already used in Sri Lanka by a third party, if the applicant is aware, or could not have been unaware, of such use;

(d) which constitutes a reproduction in whole or in part, an imitation, translation or transcription, likely to mislead the public, of a mark or trade name which is well known in Sri Lanka and belongs to a third party;

(e) which infringes other third party rights or is contrary to the provisions of Chapter XXIX relating to the prevention of unfair competition;



(f) which is filed by the agent or representative of a third party who is the owner of such mark in another country, without the authorization of such owner, unless the agent or representative justifies his action.

(2) The Director shall, in applying the provisions of paragraphs (a) to (e) of subsection (1), have regard to the fact that the third parties referred to therein have consented to the registration of such mark.

Trust not to Be Entered in Register

101. There shall not be entered in the register notice of any trust expressed, implied, or constructive, nor shall any such notice be receivable by the Director.

Chapter XXI
Requirements of Application and Procedure for Registration

Requirements of Application

102.—(1) An application for registration of a mark shall be made to the Director in the prescribed form and shall contain—

- (a) a request for the registration of the mark;
- (b) the name, address and description of the applicant and, if he is resident outside Sri Lanka, a postal address for service in Sri Lanka;
- (c) four copies of a representation of the mark;
- (d) a clear and complete list of the particular goods or services in respect of which registration of the mark is requested, with an indication of the corresponding class or classes in the international classification, as may be prescribed.

(2) where the application is filed through an agent, it shall be accompanied by a power of attorney granted to such agent by the applicant:

Provided that legalization or certification of the applicant's signature shall not be necessary.

Right of Priority

103. An applicant for registration of a mark who wishes to avail himself of the priority of an earlier application filed in a Convention country shall, within six months of the date of such earlier application, append to his application a written declaration indicating the date and number of the earlier application, the name of the applicant and the country in which he or his predecessor in title filed such application and shall, within a period of three months from the date of the later application filed in Sri Lanka, furnish a copy of the earlier application certified as correct by the appropriate authority of the country where such earlier application was filed.



Temporary Protection of Mark Exhibited at International Exhibition

104.—(1) An applicant for registration of a mark who has exhibited goods bearing the mark or rendered services under the mark at an official or officially recognized international exhibition and who applies for registration of the mark within six months from the date on which the goods bearing the mark or services under the mark were first exhibited or rendered at such exhibition shall, on request, be deemed to have applied for registration of that mark on the date on which the goods bearing the mark or the services rendered under the mark were first exhibited or rendered at such exhibition.

(2) Evidence of the exhibition of the goods bearing the mark or the services rendered under the mark shall be by a certificate issued by the competent authority of the exhibition stating the date on which the mark was first used at such exhibition in connection with such goods or services.

(3) The provisions of subsections (1) and (2) shall not be entertained unless the prescribed fee has been paid to the Director.

Application Fee

105. An application for registration of a mark shall not be entertained unless the prescribed fee has been paid to the Director.

Examination of Application as to Form

106.—(1) The Director shall examine whether the application for registration complies with sections 102 and 105 and, where applicable, sections 103 and 104.

(2) Where the application does not comply with sections 102 and 105, the Director shall refuse registration of the mark:

Provided that the Director shall first notify the applicant of any defect in the application and shall afford him an opportunity to remedy such defect within three months from the date of receipt of such notification.

(3) Where the application does not comply with section 103 or 104, the Director shall not, in connection with the registration of the mark, make any reference to the priority claimed.

(4) Where the application complies with sections 103 and 104, the Director shall in connection with the registration of the mark record the priority claimed or the date of the certified use of the mark at an international exhibition.

(5) Where the Director refuses to register a mark, he shall, if required by the applicant, state in writing the grounds of his decision.



Registration Mark after Further Examination and Publication of Mark

107.—(1) Where the application complies with sections of 102 and 105, the Director shall examine the mark in relation to the provisions of sections 99 and 100.

(2) Where the mark is inadmissible under section 99 or 100 the Director shall notify the applicant accordingly stating in writing the grounds on which registration of the mark is refused.

(3) Where the applicant is dissatisfied with all or any of the grounds stated by the Director in the notification referred to in subsection (2) he may, within a period of one month from the date of such notification, make his submissions in writing to the Director against such refusal.

(4) On receipt of any such submissions the Director may grant the applicant a hearing and inform him of the date and time of such hearing.

(5) The Director may, after such inquiry as he thinks fit, refuse to accept the application for registration of the mark, or may accept it absolutely or subject to conditions, amendments or modifications, or to such limitations, if any, as to the mode or place of user or otherwise as he may think fit to impose.

(6) In case of any refusal or conditional acceptance of an application for registration of a mark, the Director shall, if required by the applicant, state in writing the grounds of his decision.

(7) Where the Director is of the opinion that the mark is admissible under section 99 or 100 he may request the applicant to pay within a period of two months the prescribed fee for publication of the application.

(8) Where the fee for publication of the application is not paid within the prescribed period registration of the mark may be refused.

(9) If the fee for publication is paid within the prescribed period the Director shall proceed to publish the application setting out the date of application, the representation of the mark, the goods or services in respect of which registration of the mark is requested with an indication of the corresponding class or classes, the name and address of the applicant and, if the applicant is resident outside Sri Lanka, a postal address for service in Sri Lanka, the priority claimed, if any, or the date of certified use of the mark at an international exhibition.

(10) Where any person considers that the mark is inadmissible on one or more of the grounds referred to in section 99 or 100 he may, within a period of three months from the date of publication of the application, give to the Director in the prescribed form, and together with the prescribed fee, notice of opposition to such registration stating his grounds of opposition.

(11) Where notice of opposition has not been received by the Director within the period specified in subsection (10) the Director shall register the mark.



(12) Where, within the period specified in subsection (10) notice of opposition in the prescribed form is received by the Director, together with the prescribed fee, he shall serve a copy of such grounds of opposition on the applicant and shall request him to present his observations on those grounds in writing within a period of three months.

(13) On receipt of the observations of the applicant the Director shall after hearing the parties, if he considers such hearing necessary, decide, as expeditiously as possible, whether or not the mark may be registered. If he decides that the mark is registrable he shall accordingly register such mark.

(14) The Director may allow a reasonable extension of the prescribed period within which any act has to be done or any fee has to be paid under this section.

Non-Completion of Registration

108. Where, by reason of default on the part of the applicant, registration of a mark is not completed within twelve months from the date of receipt by the Director of the application, the Director may, after giving notice of non-completion to the applicant in writing in the prescribed form, treat the application as abandoned, unless it is completed within the time specified in that behalf in such notice.

Register of Marks and Issue of Certificate

109.—(1) The Director shall keep and maintain a register called the Register of Marks wherein shall be recorded, in the order of their registration, all registered marks and such other matters relating to marks as are authorized or directed by this Part to be so recorded or may from time to time be prescribed.

(2) The registration of a mark shall include a representation of the mark and shall specify its number, the name and address of the registered owner and, if the registered owner's address is outside Sri Lanka, a postal address for service in Sri Lanka; the dates of application and registration; if priority is validly claimed, an indication of that fact and the number, date and country of the application on the basis of which the priority is claimed; if a valid certificate has been filed relating to the use of a mark at an international exhibition, the contents of such certificate; the list of goods and services in respect of which registration of the mark has been granted with an indication of the corresponding class or classes.

(3) Upon the registration of a mark the Director shall issue to the registered owner thereof a certificate of registration and shall, at the request of the registered owner, send such certificate to him by registered post at his last recorded postal address in Sri Lanka or, if he is resident outside Sri Lanka, at his last recorded postal address for service in Sri Lanka.

Publication of Registered Marks

110. The Director shall cause to be published in the *Gazette*, in the prescribed form, all registered marks in the order of their registration, including in respect of each mark so published reference to such particulars as may be prescribed.



Examination of Register and Certified Copies

111. Any person may examine the register and may obtain certified extracts therefrom on payment of the prescribed fee.

Associated Marks

112. Where application is made for the registration of a mark identical with or so closely resembling a mark of the applicant already on the register for the same goods or description of goods as to be likely to mislead or cause confusion if used by a person other than the applicant, the Director may require as a condition of registration that such marks shall be entered on the register as associated marks.

Assignment and User of Associated Marks

113. Associated marks shall be assignable or transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate marks:

Provided that where under the provisions of this Part user of a registered mark is required to be proved for any purpose, the Director may, if and so far as is considered right, accept user of an associated registered mark, or of the mark with additions or alterations not substantially affecting its identity, as an equivalent for such user.

Chapter XXII
Duration of Registration

Duration of Registration

114.—(1) Subject and without prejudice to other provisions of this Part, registration of a mark shall expire ten years after the date of registration.

(2) A mark when registered shall be registered as of the date of receipt by the Director of the application for registration, and such date shall be deemed for the purposes of this Part to be the date of registration.

Renewal

115.—(1) Registration of a mark may be renewed for consecutive periods of ten years each on payment of the prescribed fee.

(2) Renewal of registration of a mark shall not be subject to any further examination of the mark by the Director or to opposition by any person.

(3) The renewal fee shall be paid within the twelve months preceding the date of expiration of the period of registration:



Provided, however, that a period of grace of six months shall be allowed for the payment of the fee after the date of such expiration, upon payment of such surcharge as may be prescribed.

(4) The Director shall record in the register and cause to be published in the *Gazette* in the prescribed form all renewals of registration stating any elimination from the lists of goods or services.

(5) Where the renewal fee has not been paid within such period or such extended period specified in subsection (3), the Director shall remove the mark from the register.

Alteration of Registered Mark

116. The registered owner of any mark may apply in the prescribed manner to the Director for leave to add to or alter such mark in any manner not substantially affecting the identity of the same, and the Director may refuse such leave or may grant the same on such terms and subject to such limitations as to mode or place of user as he may think fit. If leave be granted, the mark as altered shall be published in the prescribed manner.

Chapter XXIII Rights of Registered Owner of Mark

Rights of Registered Owner

117.—(1) Subject and without prejudice to other provisions of this Part, the registered owner of a mark shall have the following exclusive rights in relation to the mark:—

- (a) to use the mark;
- (b) to assign or transmit the registration of the mark;
- (c) to conclude licence contracts.

(2) Without the consent of the registered owner of the mark third parties are precluded from the following acts:—

(a) any use of the mark, or of a sign resembling it, in such a way as to be likely to mislead the public, for goods or services in respect of which the mark is registered, or for other goods or services in connection with which the use of the mark or sign is likely to mislead the public; and

(b) any other use of the mark, or of a sign or trade name resembling it, without just cause and in conditions likely to be prejudicial to the interests of the registered owner of the mark.

(3) The application (whether by way of printing, painting or otherwise) or the affixing in Sri Lanka by a third party, of a mark or any sign resembling such mark in such a way as to be likely to mislead the public, on or in connection with, goods in respect of which such mark



has been registered (whether such goods are intended for sale in Sri Lanka or for export from Sri Lanka) shall be deemed to be an act prohibited under subsection (2).

Limitation of Registered Owner's Rights

118. The registration of the mark shall not confer on its registered owner the right to preclude third parties—

(a) from using *bona fide* their names, addresses, pseudonyms, a geographical name, or exact indications concerning the kind, quality, quantity, destination, value, place of origin or time of production or of supply of their goods and services, in so far as such use is confined to the purposes of mere identification or information and cannot mislead the public as to the source of the goods or services;

(b) from using the mark in relation to goods lawfully manufactured, imported, offered for sale, sold, used or stocked in Sri Lanka under that mark, provided that such goods have not undergone any change.

Chapter XXIV

Assignment and Transmission of Applications and Registrations

Assignment and Transmission of Applications and Registrations

119.—(1) An application for registration or the registration of a mark may be assigned or transmitted independently of the transfer of all or part of the enterprise using the mark, in respect of all or part of the goods or services for which the application was filed or the mark registered.

(2) Such assignment or transmission shall be invalid if the purpose or effect thereof is to mislead the public, in particular in respect of the nature, source, manufacturing process, characteristics or suitability for their purpose of the goods or services to which the mark is applied.

(3) Any person becoming entitled by assignment or transmission to an application for registration or the registration of a mark may apply to the Director in the prescribed manner to have such assignment or transmission recorded in the register.

(4) No such assignment or transmission shall be recorded in the register unless—

(a) the prescribed fee has been paid to the Director;

(b) in the case of an assignment, it is in writing signed by or on behalf of the contracting parties.

(5) No such assignment or transmission shall have effect against third parties unless so recorded in the register.



Chapter XXV Licence Contracts

Interpretation

120.—(1) For the purposes of this Part licence contract means any contract by which the registered owner of a mark (“the licensor”) grants to another person or enterprise (“the licensee”) a licence to use the mark for all or part of the goods or services in respect of which the mark is registered.

(2) Use of the mark by the licensee shall be deemed to be use of the mark by the registered owner.

Form and Record of Licence Contract

121.—(1) A licence contract shall be in writing signed by or on behalf of the contracting parties.

(2) Upon a request in writing signed by or on behalf of the contracting parties, the Director shall, on payment of the prescribed fee, record in the register such particulars relating to the contract as the parties thereto might wish to have recorded:

Provided that the parties shall not be required to disclose or have recorded any other particulars relating to the said contract.

Rights of Licensee

122.—(1) In the absence of any provision to the contrary in the licence contract, the licensee shall—

(a) be entitled to use the mark within the whole geographical area of Sri Lanka, during the whole period of registration of the mark, including renewals, in respect of all the goods or services for which the mark is registered;

(b) not be entitled to assign or transmit his rights under the licence contract or grant sub-licences to third parties.

(2) The provisions of this Chapter shall apply, *mutatis mutandis*, to assignments and sub-licences.

Rights of Licensor

123.—(1) In the absence of any provision to the contrary in the licence contract, the licensor may grant further licences to third parties in respect of the same mark or himself use the mark.



(2) Where the licence contract provides that the licence is exclusive, and unless it is expressly provided otherwise in such contract, the licensor shall not grant further licences to third parties in respect of the same mark or himself use the mark.

Nullity of Licence Contract and Certain Clauses

124.—(1) A licence contract shall be null and void in the absence of stipulations ensuring effective control by the licensor of the quality of the goods or services in respect of which the mark may be used.

(2) Any clause or condition in a licence contract shall be null and void in so far as it imposes upon the licensee restrictions not derived from the rights conferred by this Part on the registered owner of the mark, or unnecessary for the safeguarding of such rights:

Provided that—

(a) restrictions concerning the scope, extent, duration of use of the mark or the geographical area in or the quality or quantity of the goods or services in connection with which the mark may be used;

(b) restrictions justified by the stipulations referred to in subsection (1); and

(c) obligations imposed upon the licensee to abstain from all acts capable of prejudicing the validity of the registration of the mark,

shall not be deemed to constitute such restrictions.

Cancellation of Licence Contracts

125. The Court may on the application of any person showing a legitimate interest, or of any competent authority including the Director, to which the registered owner of the mark and every assignee, licensee or sub-licensee on record shall be made party, annul and cancel the said contract if—

(a) the licensor has lost effective control over the quality of the goods or services in respect of which the mark is used;

(b) the licensee has used the mark in such a way as to mislead or confuse the public.

Licence Contracts Involving Payments Abroad

126.—(1) Where the Director has reasonable cause to believe that any licence contract or any amendment or renewal thereof—

(a) which involves the payment of royalties abroad; or

(b) which by reason of other circumstances relating to such licence contract;



is detrimental to the economic development of Sri Lanka he shall in writing communicate such fact to the Governor of the Central Bank and transmit all papers in his custody relevant to a decision on such matter to the Governor of the Central Bank.

(2) Where the Governor of the Central Bank on receipt of any communication under subsection (1) informs the Director in writing that the said licence contract or any amendment or renewal thereof is detrimental to the economic development of Sri Lanka the Director shall cancel and invalidate the record of such contract in the Register.

Effect of Nullity of Registration on Licence Contract

127. Where, before the expiration of the licence contract, the registration is declared null and void the licensee shall no longer be required to make any payment to the licensor under the licence contract, and shall be entitled to repayment of the payments already made:

Provided that the licensor shall not be required to make any repayment, or shall be required to make repayment only in part, to the extent that he can prove that any such repayment would be inequitable under all the circumstances, in particular if the licensee has effectively profited from the licence.

Expiry, Termination or Invalidation of Licence Contract

128. The Director shall—

(a) if he is satisfied that a recorded licence contract has expired or been terminated, record that fact in the register upon a request in writing to that effect signed by or on behalf of the parties thereto;

(b) record in the register the expiry, termination, annulment or invalidation of a licence contract under any provision of this Part.

Chapter XXVI Renunciation and Nullity of Registration

Renunciation of Registration

129.—(1) The registered owner of a mark may renounce the registration, either wholly or in respect of part of the goods or services for which the mark is registered, by a declaration in writing signed by him or on his behalf and submitted to the Director.

(2) The Director shall, on receipt of the said declaration, record it in the register and cause such record to be published in the *Gazette*.

(3) The renunciation shall take effect from the date that The Director receives the said declaration.

(4) Where a licence contract in respect of a mark is recorded in the register the Director shall not, in the absence of provision to the contrary in such licence contract, accept or record



the said renunciation except upon receipt of a signed declaration by which any assignee, licensee or sub-licensee on record consents to the renunciation, unless his consent is expressly waived in the licence contract.

Nullity of Registration

130.—(1) The Court may on the application of any person showing a legitimate interest, or of any competent authority including the Director, to which the registered owner of the mark and every assignee, licensee or sub-licensee on record shall be made party, declare the registration of the mark null and void if its registration is precluded under the provisions of sections 99 and 100:

Provided, however, that grounds of nullity which do not exist at the date of the application to Court shall not be taken into account.

(2) Where the grounds for nullity of registration of the mark exist in respect of only part of the goods or services for which the mark is registered, nullity of the registration shall be declared for that part only of such goods or services.

(3) An application for a declaration of nullity based on any of the grounds specified in section 100 (1) shall be made within five years from the date of registration of the mark.

Date and Effect of Nullity

131.—(1) Upon a final decision of the Court declaring total or partial nullity of registration of a mark, the registration shall be deemed to have been null and void totally or partially, as the case may be, from the date of such registration.

(2) When a declaration of nullity becomes final the Registrar of the Court shall notify the Director who shall record the said declaration in the register and cause it to be published in the *Gazette*.

Chapter XXVII Removal of Mark

Removal of Mark

132.—(1) The Court may on the application of any person showing a legitimate interest, or of any competent authority including the Director, to which the registered owner of the mark and every assignee, licensee or sub-licensee on record shall be made party, remove any registered mark from the register:—

(a) if the registered owner has, without valid grounds, failed to use the mark within Sri Lanka or cause it to be used within Sri Lanka by virtue of a licence, during five consecutive years immediately preceding the date of the application to Court;



(b) if the registered owner has caused, provoked or tolerated the transformation of the mark into a generic name for one or more of the goods or services in respect of which the mark is registered so that in trade circles and in the eyes of the public its significance as a mark has been lost.

(2) In any application under subsection (1) (a) the Court may take into account the fact that non-use of the mark was due to circumstances beyond the control of the registered owner. The Court shall not take into account the lack of funds of the registered owner as a ground for non-use of the mark.

(3) The use of a mark—

(a) in a form differing, in elements which do not alter the distinctive character of the mark, from the form in which it was registered shall not be a ground for removal of the mark;

(b) in connection with one or more of the goods or services belonging to any given class in respect of which the mark is registered, shall suffice to prevent the removal of the mark in respect of all the other goods or services of the same class.

Date and Effect of Removal of Mark

133. Upon a final decision of the Court removing any registered mark from the register—

(1) the Court may, taking into account the date of the events and other circumstances which occasion the removal of the mark, determine the date on which the registration of the mark shall be deemed to have ceased to have any legal effect;

(2) the Registrar of the Court shall communicate the decision of the Court to the Director who shall, if the Court decides that the mark be removed, enter in the register a record of such removal and cause the decision of the Court to be published in the *Gazette*.

Chapter XXVIII Collective Marks

Collective Marks

134. Sections 102, 116, 118, 119, and 129 to 133 of this Part shall apply to collective marks.

Application for Registration of Collective Mark

135.—(1) An application for registration of a collective mark shall not be filed unless in the said application the mark is designated as a collective mark and unless the application is accompanied by a copy of such conditions as may be prescribed governing the use of the mark duly certified by the applicant.



(2) The conditions prescribed under subsection (1) shall define the common characteristics or quality of the goods or services which the collective mark shall designate and the conditions in which and the person by whom it may be used. They shall also provide for the exercise of effective control of the use of the mark and shall specify proper sanctions for the use of the mark contrary to the said conditions.

Registration and Publication of Collective Marks

136.—(1) Registration of a collective mark shall be in such part of the register as the Director may decide and a copy of the conditions governing the use of the mark shall be appended to the registration.

(2) The publication of an application for a collective mark in accordance with section 107 (9) shall include a summary of the conditions to be appended to the registration.

(3) When so registered under subsection (1) a collective mark shall be deemed in all respects to be a registered mark.

Changes in Conditions Governing Use of Collective Mark

137.—(1) The registered owner of a collective mark shall notify the Director in the prescribed manner of any changes effected in the conditions governing the use of the mark.

(2) Any notification of such change shall be recorded in the register on payment of the prescribed fee. Any change in the conditions shall be effectual only if they have been so recorded.

(3) The Director shall cause to be published in the *Gazette* a summary of the changes so recorded in the register.

Use of Collective Marks and other Matters

138. The provisions of sections 117 to 133 shall apply, *mutatis mutandis*, to collective marks.

Chapter XXIX Trade Names and Unfair Competition

Prohibited Trade Names

139. A name or designation shall not be admissible as a trade name if, by reason of its nature or the uses to which it may be put, it is contrary to morality or public order or is likely to offend the religious or racial susceptibilities of any community or is likely to mislead trade circles or the public as to the nature of the enterprise identified by that name.



Protection of Trade Names

140.—(1) Notwithstanding the provisions of any written law providing for the registration of a trade name, such name shall be protected, even prior to or without registration, against any unlawful act committed by a third party.

(2) Any subsequent use of a trade name by a third party, whether as a trade name or as a trade mark, service mark or collective mark or any such use of a similar trade name, trade mark, service mark or collective mark likely to mislead the public shall be deemed unlawful.

(3) Section 118 of this Part shall apply to trade names.

Assignment and Transmission of Trade Names

141.—(1) A trade name may be assigned or transmitted together with the assignment or transmission of the enterprise or part of the enterprise identified by that name.

(2) The provisions of section 119 shall apply, *mutatis mutandis*, to trade names.

Unfair Competition

142.—(1) Any act of competition contrary to honest practices in industrial or commercial matters shall constitute an act of unfair competition.

(2) Acts of unfair competition shall include the following:—

(a) all acts of such a nature as to create confusion by any means whatsoever with the establishment, the goods, services, or the industrial or commercial activities of a competitor;

(b) a false allegation in the course of trade of such a nature as to discredit the establishment, the goods, services or the industrial or commercial activities of a competitor;

(c) any indication of source or appellation of origin the use of which in the course of trade is liable to mislead the public as to the nature, manufacturing process, characteristics, suitability for their purpose or the quantity of goods;

(d) making direct or indirect use of a false or deceptive indication of the source of goods or services or of the identity of their producer, manufacturer or supplier;

(e) making direct or indirect use of a false or deceptive appellation of origin or imitating an appellation of origin even if the true origin of the product is indicated, or using the appellation in translated form or accompanied by terms such as “kind”, “type”, “mark”, “imitation” or the like.

(3) Any person or association of producers, manufacturers or traders aggrieved by any of the acts referred to in subsection (2) may institute proceedings in Court to prohibit the continuance of such acts, and the provisions of Chapter XXXII relating to infringements shall apply, *mutatis mutandis*, to such proceedings.



PART VI
OFFENCES AND PENALTIES

Chapter XXX

Falsification of Entries in any Register

143. Any person who makes or causes to be made a false entry in any of the registers kept under this Code, or a writing falsely purporting to be a copy of an entry in any such register, or produces, or tenders, or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false shall be guilty of an offence and shall be liable on conviction after trial to imprisonment for a term not exceeding seven years.

Infringement of Copyright

144.—(1) Any person who wilfully infringes any of the rights protected under Part II of this Code shall be guilty of an offence and shall be liable on conviction after trial before a Magistrate to a fine not exceeding twenty thousand rupees or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment, and in the case of a second or subsequent conviction the above fine or term of imprisonment or both may be doubled.

(2) The Magistrate may, whether the alleged offender is convicted or not, order that all copies of the work and all implements used for the infringement, or all plates in the possession of the alleged offender, which appear to him to be infringing copies or plates for the purpose of making infringing copies, shall be destroyed or delivered up to the owner of the copyright, or otherwise dealt with as the Magistrate may think fit.

Infringement of Industrial Designs

145. Any person who wilfully infringes the rights of any registered owner, assignee or licensee of an industrial design shall be guilty of an offence and shall be liable on conviction after trial before a Magistrate to a fine not exceeding twenty thousand rupees or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment, and in the case of a second or subsequent conviction the above fine or term of imprisonment or both may be doubled.

False Representations Regarding Industrial Designs

146.—(1) Any person who, for industrial or commercial purposes, makes a representation—

(a) with respect to an industrial design not being a registered industrial design to the effect that it is a registered industrial design;

(b) to the effect that a registered industrial design is registered in respect of any products in respect of which it is not registered; or



(c) to the effect that the registration of an industrial design gives an exclusive right to the use thereof in any circumstances in which, having regard to limitations recorded in the register, the registration does not give that right,

shall be guilty of an offence, and shall be liable on conviction after trial before a Magistrate to a fine not exceeding twenty thousand rupees or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

(2) A person shall be deemed to represent that an industrial design is registered if he uses in connection with the industrial design the word “registered”, or any word or words expressing or implying that registration has been obtained for the industrial design.

Infringement of Patents

147. Any person who wilfully infringes the rights of any registered owner, assignee or licensee of a patent shall be guilty of an offence, and shall be liable on conviction after trial before a Magistrate to a fine not exceeding twenty thousand rupees or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment, and in the case of a second or subsequent conviction the above fine or term of imprisonment or both may be doubled.

False Representations Regarding Patents

148.—(1) Any person who, for industrial or commercial purposes, makes a representation—

(a) with respect to a patent not being a registered patent to the effect that it is a registered patent;

(b) to the effect that a registered patent is registered in respect of any product or process in respect of which it is not registered; or

(c) to the effect that the registration of a patent gives an exclusive right to the use thereof in any circumstances in which, having regard to limitations recorded in the register, the registration does not give that right,

shall be guilty of an offence, and shall be liable on conviction after trial before a Magistrate to a fine not exceeding twenty thousand rupees or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

(2) A person shall be deemed to represent that a patent is registered if he uses in connection with the patent the word “registered”, or any word or words expressing or implying that registration has been obtained for the patent.

Unlawful Disclosure of Information Relating to Patents

149. Any person who being or having been employed in or at the Office, communicates any information relating to patents or matters connected therewith obtained by him during the



course of his employment in or at the Office to any person not entitled or authorized to receive such information, or discloses such information to the public or makes any other unlawful use of such information shall be guilty of an offence, and shall be liable on conviction after trial before a Magistrate to a fine not exceeding twenty thousand rupees or to imprisonment for a term not exceeding twelve months or to both such fine and such imprisonment.

Infringement of Marks

150. Any person who wilfully infringes the rights of any registered owner, assignee or licensee of a mark shall be guilty of an offence, and shall be liable on conviction after trial before a Magistrate to a fine not exceeding twenty thousand rupees or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment and in the case of a second or subsequent conviction the above fine or term of imprisonment or both may be doubled.

False Representations Regarding Marks

151.—(1) Any person who, for industrial or commercial purposes, makes a representation—

(a) with respect to a mark not being a registered mark to the effect that it is a registered mark;

(b) to the effect that a registered mark is registered in respect of any goods or services in respect of which it is not registered; or

(c) to the effect that the registration of a mark gives an exclusive right to the use thereof in any circumstances in which, having regard to limitation recorded in the register, the registration does not give that right,

shall be guilty of an offence and shall be liable on conviction after trial before a Magistrate to a fine not exceeding twenty thousand rupees or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

(2) A person shall be deemed to represent that a mark is registered if he uses in connection with the mark the word “registered”, or any word or words expressing or implying that registration has been obtained for the mark.

Other Offences as to Marks and Trade Descriptions

152.—(1) Any person who—

(a) forges any mark; or

(b) falsely applies to goods any mark or marks so nearly resembling a registered mark as to be likely to mislead; or



(c) makes any die, block, machine, or other instrument for the purpose of forging, or being used for forging, a mark; or

(d) applies any false trade description to goods; or

(e) disposes of, or has in his possession, any die, block, machine, or other instrument for the purpose of forging a mark; or

(f) cause to be done any of the things referred to above in this subsection,

shall, subject to the provisions of this Part, and unless he proves that he acted without intent to defraud, be guilty of an offence.

(2) Any person who sells or exposes for, or has in his possession for, sale, or any purpose of trade or manufacture, any goods or things to which any forged mark or false trade description is applied, or to which any mark so nearly resembling a registered mark as to be likely to mislead, is falsely applied, as the case may be, shall, unless he proves—

(a) that having taken all reasonable precautions against committing an offence he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark, or trade description; and

(b) that on demand made by or on behalf of the prosecutor he gave all the information in his power with respect to the persons from whom he obtained such goods or things; or

(c) that otherwise he had acted innocently,

be guilty of an offence.

(3) Any person who imports any piece-goods ordinarily sold by length or by the piece, manufactured beyond the limits of Sri Lanka, or who sells or exposes for, or has in his possession for, sale, or any purpose of trade, any piece goods ordinarily sold as aforesaid, whether manufactured within or beyond the limits of Sri Lanka, which have not conspicuously stamped in English numerals on each piece the length thereof in standard metres, or in standard metres and a fraction of such a metre, according to the real length of the piece, shall be guilty of an offence:

Provided that nothing in this subsection contained shall apply to any piece goods manufactured within the limits of Sri Lanka by hand labour only.

(4) Any person found guilty of an offence under this section after trial before a Magistrate shall be liable on conviction to a fine not exceeding twenty thousand rupees or to imprisonment for a term not exceeding two years or to both such fine and such imprisonment, and in the case of a second or subsequent conviction the above fine or term of imprisonment or both may be doubled.

(5) The Magistrate may, whether the alleged offender is convicted or not, order that every chattel, article, instrument or thing by means of or in relation to which the offence has or might have been committed shall be destroyed or declared forfeit to the State or otherwise dealt with as he may think fit.

Offences by Bodies Corporate

153. Where an offence under this Code has been committed by a body corporate, every person who at the time of the commission of the offence was a director, general manager, secretary or other similar officer of that body or was obliged to act in any such capacity, shall be deemed to be guilty of such offence, unless he proves that the offence was committed without his consent or connivance and that he exercised all due diligence to prevent the commission of the offence having regard to the nature of his functions in that capacity and to all the circumstances.

Interpretation

154. For the purposes of this Part, the definitions contained in section 97 shall apply, unless the context otherwise requires.

False Name or Initials

155.—(1) The provisions of this Part respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods—

(a) of any such figures, words, marks or arrangement or combination thereof, whether including a registered mark or not, as are likely to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are;

(b) of any false name or initials of a person and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the purposes of this Part the expression “false name or initials” means, as applied to any goods, any name or initials of a person which—

(i) are not a mark, or part of a mark; and

(ii) are identical with, or a colourable imitation of, the name or initials of a person carrying on business in connection with goods of the same description, and not having authorized the use of such name or initials; and

(iii) are either those of a fictitious person or of some person not *bona fide* carrying on business in connection with such goods.

(2) A trade description which denotes or implies that there are contained in any goods to which it is applied more metres or standard metres than there are contained therein, is a false trade description.

Forging Marks

156. A person shall be deemed to forge a mark who either—



(a) without the assent of the owner of the mark makes that mark, or a mark so nearly resembling that mark as to be likely to mislead; or

(b) falsifies any genuine mark, whether by alteration, addition, effacement or otherwise, and any mark so made or falsified is in this Part referred to as a forged mark:

Provided that in any prosecution for forging a mark the burden of proving the assent of the owner shall lie on the accused.

Applying Marks and Descriptions

157.—(1) A person shall be deemed to apply a mark or trade description to goods who—

(a) applies it to the goods themselves; or

(b) applies it to any covering, label, reel or other thing in or with which the goods are sold or exposed, or had in possession for any purpose of sale, trade, or manufacture; or

(c) places encloses, or annexes any goods which are sold or exposed, or had in possession for any purpose of sale, trade, or manufacture, in, with, or to any covering, label, reel, or other thing to which a mark or trade description has been applied; or

(d) uses a mark, or trade description in any manner likely to lead to the belief that the goods in connection with which it is used are designated or described by that mark, or trade description.

(2) The expression “covering” includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame, or wrapper; and the expression “label” includes any band or ticket.

(3) A mark, or trade description shall be deemed to be applied whether it is woven, impressed, stamped, branded, or otherwise worked into or annexed, or affixed to the goods, or any covering, label, reel, or other thing.

(4) A person shall be deemed to falsely apply to goods a mark who, without the assent of the owner of a mark, applies such mark or any mark so nearly resembling it as to be likely to mislead, but in any prosecution for falsely applying a mark to goods the burden of proving the assent of the owner shall lie on the accused.

Exemption of Certain Persons Employed in Ordinary Course of Business

158. Where a person is charged with making any die, block, machine, or other instrument for the purpose of forging or being used for forging, a mark, or with falsely applying to goods any mark or any mark so nearly resembling a mark as to be likely to mislead, or with applying to goods any false trade description or causing any of the things in this section mentioned to be done, and proves—



(a) that in the ordinary course of his business he is employed, on behalf of other persons, to make dies, blocks, machines, or other instruments for making, or being used in making, marks, or as the case may be, to apply marks or descriptions to goods and that in the case which is the subject of the charge he was so employed by some person resident in Sri Lanka, and was not interested in the goods by way of profit or commission dependent on the sale of such goods; and

(b) that he took reasonable precautions against committing the offence charged; and

(c) that he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the mark or trade description; and

(d) that he gave to the prosecutor all the information in his power with respect to the person on whose behalf the mark or description was applied,

he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor unless he has given due notice to him that he will rely on the above defence.

Watches

159. Where a watch case has thereon any words or marks which constitute, or are by common repute considered as constituting, a description of the country in which the watch was made, and the watch bears no description of the country where it was made, those words or marks shall, *prima facie*, be deemed to be a description of that country within the meaning of this Part, and the provisions of this Part with respect to goods to which a false trade description has been applied, and with respect to selling or exposing for, or having in possession for, sale, or any purpose of trade or manufacture, goods with a false trade description, shall apply accordingly, and for the purposes of this section the expression “watch” means all that portion of a watch which is not the watch case.

Mark How Described in Pleading

160. In any indictment, charge, proceeding, or document in which any mark or forged mark is intended to be mentioned, it shall be sufficient, without further description and without any copy or facsimile, to state that mark or forged mark to be a mark or forged mark.

Rules as to Evidence

161. In any prosecution for an offence under this Part—

(a) an accused, and his wife or her husband, as the case may be, may, if the accused thinks fit, be called as a witness, and, if called, shall be sworn and examined, and may be cross-examined and re-examined in like manner as any other witness;

(b) in the case of imported goods evidence of the port of shipment shall be *prima facie* evidence of the place or country in which the goods were made or produced.



Punishment of Accessories

162. Any person who, being within Sri Lanka, abets the commission, outside Sri Lanka, of any act which, if committed within Sri Lanka, would under this Part be an offence, shall be deemed guilty of that offence, and be liable to be indicted, proceeded against, tried and convicted in any district or place in Sri Lanka in which he may be as if the offence had been there committed.

Search Warrant

163.—(1) Where, upon information of an offence under this part, a Magistrate has issued either a summons requiring the person charged by such information to appear to answer to the same, or a warrant for the arrest of such person, and either the said Magistrate on or after issuing the summons or warrant, or any other Magistrate, is satisfied by information on oath that there is reasonable cause to suspect that any goods or things by means of, or in relation to, which such offence has been committed are in any house or premises of the person charged by such information, or otherwise in his possession or under his control, in any place, such Magistrate may issue a warrant under his hand, by virtue of which it shall be lawful for any police officer, or other person named or referred to in the warrant, to enter such house, premises, or place at any reasonable time by day, and to search therefor and seize and take away such goods or things; and any goods or things seized under any such warrant shall be brought before a Magistrate's Court for the purpose of its being determined whether the same are or are not liable to forfeiture under this Part.

(2) If the owner of any goods or things which, if the owner thereof had been convicted, would be liable to forfeiture under this Part, is unknown or cannot be found, an information or complaint may be laid for the purpose only of enforcing such forfeiture, and a Magistrate's Court may cause notice to be advertised stating that, unless cause is shown to the contrary at the time and place named in the notice, such goods or things will be forfeited, and at such time and place the Court, unless the owner or any person on his behalf, or other person interested in the goods or things, shows sufficient cause to the contrary, may order such goods or things or any of them to be forfeited, and every such order shall be subject to appeal.

(3) Any goods or things forfeited under this section, or under any other provisions of this Part, may be destroyed or otherwise disposed of in such manner as the Court by which the same are forfeited may direct, and such Court may, out of any proceeds which may be realized by the disposition of such goods (all marks and trade descriptions being first obliterated), award to any innocent party any loss he may have innocently sustained in dealing with such goods.

Costs of Defence and of Prosecution

164. In any prosecution under this Part the Court may order costs to be paid to the accused by the prosecutor or to the prosecutor by the accused, having regard to the information given by, and the conduct of, the accused and prosecutor respectively, and the sum so awarded as costs shall be recoverable as if it were a fine.



Limitation of Prosecution

165. No prosecution for an offence under this Part shall be commenced after the expiration of three years next after the commission of the offence or one year next after the first discovery thereof by the prosecutor, which ever expiration first happens.

Prohibition on Importation

166.—(1) All goods which, if sold, would be liable to forfeiture under this Part, and also all goods made or produced beyond the limits of Sri Lanka, and having applied thereto any name or mark being, or purporting to be, or being a colourable imitation of, the name or mark of any manufacturer, dealer, or trader in Sri Lanka, unless such name or mark is accompanied by a definite indication, indicated in letters as large and conspicuous as any letter in the name or mark, of the place and country in which the goods were made or produced, and also all piece-goods such as are ordinarily sold by the length or by the piece, which have not conspicuously stamped in English numerals on each piece the length thereof in standard metres or in standard metres and a fraction of such a metre according to the real length of the piece, are hereby prohibited to be imported into Sri Lanka, and, subject to the provisions of this section, shall be included among goods prohibited to be imported as if they were referred to in section 43 of the Customs Ordinance, and included in Schedule B to that Ordinance.

(2) Before detaining any such goods, or taking any further proceedings with a view to the forfeiture thereof under the law relating to the customs, the Principal Collector of Customs, or other officer specially appointed in that behalf by the Minister in charge of the subject of Finance may require the regulations under this section, whether as to information, security, conditions, or other matters, to be complied with, and may satisfy himself in accordance with those regulations that the goods are such as are prohibited by this section to be imported.

(3) The Principal Collector of Customs may from time to time, with the sanction of the Minister in charge of the subject of Finance, make, revoke, and vary regulations, either general or special, respecting the detention and forfeiture of goods the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may by such regulations determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of giving such evidence.

(4) Where there is on any goods a name which is identical with, or a colourable imitation of, the name of a place in Sri Lanka, that name, unless accompanied in equally large and conspicuous letters by the name of the country in which such place is situate, shall be treated, for the purposes of this section, as if it were the name of a place in Sri Lanka.

(5) Such regulations may apply to all goods the importation of which is prohibited by this section, or different regulations may be made respecting different classes of such goods or of offences in relation to such goods.



(6) The regulations may provide for the informant reimbursing the Principal Collector of Customs all expenses and damages incurred in respect of any detention made on his information and of any proceedings consequent on such detention.

(7) All regulations under this section shall be published in the *Gazette*.

(8) This section shall have effect as if it formed part of the Customs Ordinance.

Implied Warranty on Sale of Marked Goods

167. On the sale, or in the contract for the sale, of any goods to which a mark, or trade description has been applied, the vendor shall be deemed to warrant that the mark is a genuine mark, and not forged or falsely applied, or that the trade description is not a false trade description within the meaning of this Part, unless the contrary is expressed in some writing signed by or on behalf of the vendor and delivered at the time of the sale or contract to, and accepted by, the vendee.

Provisions as to False Description not to Apply in Certain Cases

168. Where, on the commencement of this Code, a trade description is lawfully and generally applied to goods of a particular class, or manufactured by a particular method, to indicate the particular class or method of manufacture of such goods, the provisions of this Part with respect to false trade descriptions shall not apply to such trade description when so applied:

Provided that where such trade description includes the name of a place or country, and is likely to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods are not actually made or produced in that place or country, this section shall not apply unless there is added to the trade description, immediately before or after the name of that place or country, in an equally conspicuous manner, with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there.

Savings

169.—(1) This Part shall not exempt any person from any action, suit, or other proceeding which might, but for the provisions of this Part, be brought against him.

(2) Nothing in this Part shall entitle any person to refuse to make a complete discovery, or to answer any question or interrogatory in any action, but such discovery or answer shall not be admissible in evidence against such person in any prosecution for an offence under this Part.

(3) Nothing in this Part shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in Sri Lanka who *bona fide* acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master.



Cognizable and Bailable Offences

170. All offences under this Part are hereby declared to be “cognizable” and “bailable”, within the meaning of those terms as defined in the Code of Criminal Procedure Act, No. 15 of 1979.

PART VII
MISCELLANEOUS

Chapter XXXI
Regulations

Regulations

171.—(1) The Minister may from time to time make regulations for the purpose of carrying out or giving effect to the principles and provisions of this Code and in particular in respect of any matter required under this Code to be prescribed.

(2) Without prejudice to the generality of the powers conferred by subsection (1) the Minister may make regulations in respect of any or all of the following matters:—

(a) the practice of registration;

(b) the classification of goods and services for the purposes of registration;

(c) the fees payable in respect of registration and other matters;

(d) the forms to be used;

(e) all matters which under Parts III, IV and V of this Code have been placed under the direction or control of the Director.

(3) Every regulation made by the Minister shall be published in the *Gazette* and shall come into operation on the date of such publication or on such later date as may be specified therein.

(4) Every regulation made by the Minister shall as soon as convenient after its publication in the *Gazette* be brought before the Parliament for approval. Any such regulation which is not so approved shall be deemed to be rescinded as from the date of its disapproval, but without prejudice to anything previously done thereunder.

(5) Notification of the date on which any regulation made by the Minister is so deemed to be rescinded shall be published in the *Gazette*.



Chapter XXXII Applications to, and Proceedings Before, the Director and Court

Correction and Rectification of Register

172.—(1) The Director may, on application in the prescribed manner by or on behalf of the registered owner of an industrial design, patent or mark, correct any error or enter any change—

(a) in the name, address or description of the registered owner of any industrial design, patent or mark; or

(b) concerning any other particulars relating to the registration of an industrial design, patent or mark as may be permitted by regulation.

(2) Subject and without prejudice to other provisions of this Code—

(a) the Court may on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from any register, of any entry, or by any entry made in any register without sufficient cause, or by any entry wrongly remaining on any register, or by any error or defect in any entry in any register, make such order for making, expunging, or varying such entry, as it may fit;

(b) the Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of any register;

(c) in case of fraud in the registration, assignment or transmission of any registered industrial design, patent or mark, the Director may himself apply to the Court under the provisions of this section.

(3) In any proceedings under this Code in which the relief sought includes correction, alteration or rectification of any register, the Director shall have the right to appear and be heard, and shall appear if so directed by the Court. Unless otherwise directed by the Court, the Director in lieu of appearing and being heard may submit to the Court a statement in writing signed by him, giving particulars of the proceedings before him in relation to the matter in issue or of the grounds of any decision given by him affecting the same or of the practice of the office in like cases, or of such other matters relevant to the issue, and within his knowledge as such Director, as he shall think fit, and such statement shall be deemed to form part of the evidence in the proceedings.

(4) The Court, in dealing with any question of the correction, alteration or rectification of any register, shall have power to review any decision of the Director relating to the entry in question or the correction, alteration or rectification sought to be made.



*Power to Make Copies of Damaged Volumes of Any Register,
to Prepare and Insert Reconstructed Folios*

173.—(1) Where the Director is satisfied that any volume of any register kept under this Code has been so damaged as to render that volume incapable of being mended, he may cause a copy thereof to be made and authenticated in such manner as he may direct.

(2) Any copy made and authenticated under the provisions of subsection (1) shall replace the volume of which it is a copy, and shall for all purposes be deemed to have the same legal force and effect as the volume which such copy replaces.

(3) The Director shall cause every damaged volume of which a copy has been made under the provisions of subsection (1) to be preserved as long as it is reasonably practicable for any reference which may be necessary.

(4) Where the Director, after due investigation, is satisfied that any folio of any volume of any register has been lost and cannot be recovered or that any such folio has been permanently mutilated or so obliterated or damaged as to render the entries or any material part of the entries therein illegible he may cause a reconstructed folio to be prepared.

(5) No folio shall be reconstructed as provided in subsection (4) except in accordance with regulations providing—

(a) for evidence to be admitted and used by the Director in ascertaining the particulars originally contained in the lost or mutilated or damaged folio;

(b) for the giving of notice by the Director of the preparation of the reconstructed folio;

(c) for the lodging of objections by any person affected by any of the particulars contained in the reconstructed folio; and

(d) for the inquiry into any such objections by the Director.

(6) Where any folio has been reconstructed by the Director in accordance with the preceding provisions of this section, the Director shall authenticate the reconstructed folio in the prescribed manner and shall thereafter cause the reconstructed folio to be inserted in the appropriate volume of the register in the place formerly occupied by the lost folio or in place of the mutilated or damaged folio, or in a copy of a volume prepared under the provisions of this section, as the case may be, and the reconstructed folio, when so authenticated and inserted, shall for all purposes be deemed to have the same legal force and effect as the folio which such reconstructed folio replaces.

(7) The Director may, after such inquiry as he may deem necessary, correct any clerical error or omission which may be discovered in any entry in any register or in any certificate kept or issued under the provisions of this Code and for that purpose may recall any such certificate and amend the same or issue a fresh certificate in its place.



Certificate of Director to be Evidence

174. A certificate purporting to be under the hand of the Director as to any entry, matter, or thing which he is authorized by this Code or regulations made thereunder to make or do, shall be *prima facie* evidence of the entry having or thing having been done or not done.

Certified Copies to be Evidence

175. Printed, mechanically produced, typed or written copies or extracts, purporting to be certified by the Director, of or from any document, register, or other book filed or kept under this Code in the Office shall be admitted in evidence in all Courts in Sri Lanka, and in all proceedings, without further proof or production of the originals.

Mode of Giving Evidence

176.—(1) In any proceeding under this Code before the Director or the Court, the evidence shall be given by affidavit in the absence of directions to the contrary. But, in any case in which the Director or the Court shall think it right so to do, the Director or the Court may take evidence *viva voce* in lieu of or in addition to evidence by affidavit.

(2) In case any part of the evidence is taken *viva voce*, the Director may exercise the powers conferred on a commission appointed under the provisions of the Commissions of Inquiry Act for compelling the attendance of witnesses and the production of documents and for administering oaths to all persons who shall be examined before him.

Exercise of Discretionary Power by Director

177. Where any discretionary or other power is given to the Director by this Code or regulations made thereunder, he shall not exercise that power adversely to the applicant for registration or the registered owner of an industrial design, patent or mark without (if duly required so to do within the prescribed time) giving such applicant or registered owner an opportunity of being heard.

Director May Take Directions of Law Officers

178. The Director may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Code, apply to the Attorney-General or Solicitor General for directions in the matter.

*Infringement Proceedings by Registered Owner of Industrial Design,
Patent or Mark*

179. Where the registered owner of an industrial design, patent or mark proves that any person is threatening to infringe or has infringed the said industrial design, patent or mark, as the case may be, or is performing acts which make it likely that infringement will occur, the



Court may grant an injunction restraining any such person from committing or continuing such infringement or performing such acts and may award damages and such other relief as to the Court appears just and appropriate:

Provided that the defendant may in the same proceedings request the Court to declare the registration of the said industrial design, patent or mark, as the case may be, or any part of it, null and void, in which event the provisions of sections 57, 58, 95, 96, 130 and 131 shall apply as appropriate.

Infringement Proceedings by or at Request of Licensee

180. In the absence of any provision to the contrary in a licence contract relating to an industrial design, patent or mark, the licensee may—

(a) in respect of the threatened infringement, infringement or acts referred to in section 179 request the registered owner of the industrial design, patent or mark to apply for an injunction:

Provided that the licensee shall indicate the threatened infringement, infringement or acts being performed, and specify the relief desired; and

(b) if the registered owner of the said industrial design, patent or mark refuses or fails to apply for an injunction within three months from receipt of the said request, apply for an injunction in his own name, with notice to the registered owner who may join in the proceedings:

Provided that the Court may, on the application of the licensee, even before the expiry of the period of three months, grant an injunction if he proves that immediate action is necessary to avoid substantial damage.

Declaration of Non-Infringement

181.—(1) The Court may on the application of any person showing a legitimate interest to which the registered owner of the industrial design, patent or mark, as the case may be, shall be made party, declare that the threatened performance or performance of a specific act does not constitute a threatened infringement or infringement of the said industrial design, patent or mark.

(2) The registered owner of the industrial design, patent or mark, as the case may be, shall give notice of the said application to any assignee or licensee, who shall be entitled to join in the proceedings in the absence of any provision to the contrary in any agreement with the registered owner.

(3) Proceedings for a declaration of non-infringement may be instituted concurrently with proceedings to declare the registration of an industrial design, patent or mark null and void:



Provided that the matters in issue in the proceedings for a declaration of non-infringement are not already the subject of infringement proceedings.

(4) The provisions of the Judicature Act, No. 2 of 1978, and the Civil Procedure Code shall apply to every application for an injunction made to the Court under this Code.

Appeals

182.—(1) Any person aggrieved by any decision or order made by the Director under any provision of this Code may appeal therefrom to the Court.

(2) In any such appeal the Court shall have and exercise the same discretionary powers as under this Code are conferred upon the Director.

(3) Every judgement or order of the District Court under this Code shall be subject to an appeal to the Court of Appeal and such appeal shall be subject to the same rules which govern interlocutory appeals from District Courts.

Costs of Proceedings Before Director and Court

182.—(1) In all proceedings before the Director under this code, the Director shall have power to award any party such costs as he may consider reasonable, and to direct to whom and to what parties they are to be paid, and such order may be filed in Court, and thereupon such order may be enforced as if it were an order of the Court.

(2) In all proceedings before a Court under this Code, the costs of the Director shall be in the discretion of the Court, but the Director shall not be ordered to pay the costs of any other of the parties.

Stamp Duties

184. The minimum stamp duties chargeable in the District Court in civil proceedings and in the Court of Appeal under the provisions of the enactment for the time being in force relating to stamps shall, so far as the same may be applicable and except as herein otherwise provided, be charged in all proceedings under this Code in the District Court and in the Court of Appeal:

Provided that in no case shall the Director be required to use any stamp or be charged with any stamp duty.

Fund

185.—(1) For the purposes of this Code there shall be established a Fund which shall be maintained in such manner as the Secretary to the Ministry of the Minister in charge of the subject of Trade and the Director may direct.

(2) There shall be paid into the Fund two thirds of each and every fee or charge prescribed, levied or recoverable under this Code by the Director.



(3) The balance one-third of each and every such fee or charge prescribed, levied or recoverable under this Code by the Director shall be paid into the Consolidated Fund.

(4) There shall be paid out of the Fund referred to in subsection (1) all sums of money required to defray any expenditure incurred by the Director in the exercise, discharge and performance of his powers, functions and duties under this Code and all such sums of money as are required to be paid out of such Fund by or under this Code or any regulation made thereunder.

(5) The Secretary to the Ministry in charge of the subject of Trade shall as soon as possible after the end of each calendar year prepare a report on the administration of the Fund and shall cause to be maintained a full and appropriate account of the Fund in respect of each calendar year.

(6) The Auditor-General shall audit the accounts of the Fund.

(7) The financial year of the Fund shall be the calendar year.

Interpretation

186. In this code unless the context otherwise requires—

“Central Bank of Ceylon” means the Central Bank of Ceylon established under the Monetary Law Act;

“Convention country” means any country that has acceded to or ratified or that may hereafter accede to or ratify the Paris Convention for the Protection of Industrial Property and includes any country which has entered into or which may hereafter enter into any treaty, convention or arrangement with Sri Lanka creating reciprocal rights and obligations between such country and Sri Lanka in regard to industrial designs, patents and marks and the registration thereof;

“Court” means the District Court of Colombo;

“prescribed” means prescribed by this Code or any regulation thereunder.

Chapter XXXIII Repeals and Savings

Copyright: Repeal of Chapter 154 and savings

187.—(1) The Copyright Ordinance (Chapter 154) is hereby repealed.

(2) The Copyright Act, 1911, of the Parliament of the United Kingdom or any provision therein contained shall have no application to any right or title acquired in any copyright after the appointed date.

(3) Notwithstanding the repeal of the aforesaid Ordinance every rule or regulation made thereunder, and under section 14 of the Copyright Act, 1911, of the Parliament of the



United Kingdom, as is in force on the appointed date in so far as such rule or regulation is not inconsistent with the provisions of Part II of this Code shall be deemed to be a regulation made under this code, and may be amended, or rescinded by regulations made under this Code.

Industrial Designs: Repeal of Chapter 153 and Savings

188.—(1) The Designs Ordinance (Chapter 153) is hereby repealed.

(2) Notwithstanding the repeal of the aforesaid Ordinance every rule or regulation made thereunder as is in force on the appointed date in so far as such rule or regulation is not inconsistent with the provisions of Part III of this Code shall be deemed to be a regulation made under this Code, and may be amended or rescinded by regulations made under this Code.

(3) The validity of the original entry of a design on the register of designs existing under the repealed Ordinance immediately before the appointed date or on any register of designs which was kept under any previous Ordinance and was incorporated with and declared to form part of the first-mentioned register, shall be determined in accordance with the law in force at the date of such entry, and every such design shall retain its original date, but for all purposes it shall be deemed to have been registered under Part III of this Code.

Patents: Repeal of Chapter 152 and Savings

189.—(1) The Patents Ordinance (Chapter 152) is hereby repealed.

(2) Notwithstanding the repeal of the aforesaid Ordinance every rule or regulation made thereunder as is in force on the appointed date in so far as such rule or regulation is not inconsistent with the provisions of Part IV of this Code shall be deemed to be a regulation made under this Code, and may be amended or rescinded by regulations made under this Code.

(3) The validity of the original entry of a patent on the register of patents existing under the repealed Ordinance immediately before the appointed date or on any register of patents which was kept under any previous Ordinance and was incorporated with and declared to form part of the first-mentioned register, shall be determined in accordance with the law in force at the date of such entry, and every such patent shall retain its original date, but for all purposes it shall be deemed to have been registered under Part IV of this Code.

(4) The Director may in his discretion notwithstanding the provisions of section 46 of the repealed Ordinance issue a certificate under section 76 of this Code in respect of applications under section 46 of the repealed Ordinance received by him prior to the appointed date.



Marks: Repeal of Chapters 150 and 151 and Savings

190.—(1) The Trade Marks Ordinance (Chapter 150) and the Merchandise Marks Ordinance (Chapter 151) are hereby repealed.

(2) Notwithstanding the repeal of the aforesaid Ordinances—

(a) every rule or regulation made thereunder as is in force on the appointed date in so far as such rule or regulation is not inconsistent with the provisions of Part V of this Code shall be deemed to be a regulation made under this Code and may be amended or rescinded by regulations made under this Code;

(b) any trade mark registered in Part B of the Register of Trade Marks by virtue of the provisions of Part III of the repealed Trade Marks Ordinance shall be deemed to be valid and effectual and shall continue to be so registered until such time not exceeding a period of five years from the appointed date, as the owner of such trade mark shall satisfy the Director that he is entitled to registration of such trade mark under the provisions of this Code;

(c) the validity of the original entry of a trade mark on the Register of Trade Marks existing under the repealed Trade Marks Ordinance immediately before the appointed date or on any register of trade marks which was kept under any previous Ordinance and was incorporated with and declared to form part of the first-mentioned register, shall be determined in accordance with the law in force at the date of such entry, and every such trade mark shall retain its original date, but for all purposes it shall be deemed to have been registered under Part V of this Code;

(d) no trade mark which was on the register at the commencement of the repealed Trade Marks Ordinance and which under that Ordinance was then a registerable trade mark shall be removed from the register on the ground that it was not registerable under the law in force at the date of its registration;

(e) no trade mark which was on the register immediately before the appointed date and which under Part V is a registrable mark shall be removed from the register on the ground that it was not registrable under the law in force at the date of its registration;

(f) nothing in Part V shall—

(i) invalidate the original registration of a trade mark which was validly on the register immediately before the appointed date; or

(ii) subject any person to any liability in respect to any act or thing done before the appointed date to which he would not have been subject under the law in force at the time such act or thing was done.

Additional Repeals

191. The Patents, Designs and Trade Marks (Neuchatel Agreement) Act (Chapter 156), the Patents, Designs, Copyright and Trade Marks (Emergency) Ordinance (Chapter 157) and the Trade Marks Act, No. 30 of 1964, are hereby repealed.



Additional Savings

192. Notwithstanding the repeal of the Acts and Ordinances referred to in sections 187 to 191—

(1) every application for registration of an industrial design, patent or mark made to the Director before the appointed date shall be deemed to be an application made to the Director under Part III, IV or V respectively of this Code, and the Director shall deal with such applications under the provisions of this Code applicable to applications made after the appointed date;

(2) every action, proceeding or other matter relating to copyright, industrial designs, patents and marks already instituted and pending under the provisions of the repealed Acts and Ordinances in any Court, original or appellate, on the appointed date shall be continued and proceeded with to final judgement, completion and execution under the provisions of the repealed Acts and Ordinances;

(3) nothing in Parts III, IV and V of this Code shall affect any order or requirement made, table of fees or certificates issued, notice, decision, determination, direction or approval given, application made, or thing done, under the Acts and Ordinances repealed by this Code; and every such order, requirement, table of fees, certificate, notice, decision, determination, direction, approval, application or thing shall, if in force on the date immediately preceding the appointed date, continue in force and shall, so far as it could have been made, issued, given or done under this Code have effect as if made, issued, given or done under the corresponding provisions of this Code.

PART VIII
CONSTITUTION AND POWERS OF ADVISORY COMMISSION

Appointments &c. of Advisory Commission

193.—(1) The Minister may constitute a Commission (hereinafter referred to as the “Advisory Commission”) for the purpose of advising him on any matter referred to him in relation to the law relating to Copyright, Industrial Designs, Trade Marks, Patents and Unfair Competition.

(2) The Advisory Commission constituted under subsection (1) shall consist of—

(a) not less than five and not more than ten members appointed by the Minister from among persons who have shown capacity in law or commerce or related fields, (a member appointed under this paragraph is hereinafter referred to as an “appointed member”); and

(b) the Director who shall be an *ex officio* member and shall function as the secretary to the Advisory Commission.

(3)(a) Subject to the provisions of subsection (4), the term of office of an appointed member of the Advisory Commission shall be three years:



Provided that a member appointed in place of a member who resigns or is removed or otherwise vacates office, shall hold office for the unexpired part of term of office of the member whom he succeeds.

(b) an appointed member of the Advisory Commission who vacates office by effluxion of time shall be eligible for reappointment.

(4)(a) An appointed member of the Advisory Commission may resign from office by letter to that effect addressed to the Minister and such resignation shall take effect on such resignation being accepted by the Minister in writing.

(b) The Minister may at any time remove an appointed member from office, without assigning any reason therefor.

(c) Where an appointed member is temporarily unable to discharge the duties of his office on account of illness, absence from Sri Lanka or any other cause, the Minister may appoint some other person to act as a member in his place.

(5)(a) The Minister shall appoint a Chairman of the Advisory Commission (in this Part referred to as the “Chairman”) from among the appointed members of the Advisory Commission.

(b) If the Chairman is by reason of illness, other infirmity or absence from Sri Lanka, temporarily unable to perform the duties of his office, the Minister may appoint another appointed member to act in his place.

(c) The Minister may at any time remove the Chairman from office, without assigning any reason therefor.

(d) The Chairman may resign from the office of Chairman by a letter to that effect addressed to the Minister and such resignation shall take effect on such resignation being accepted by the Minister.

(e) Subject to the provisions of paragraphs (c) and (d), the term of office of the Chairman shall be his period of his membership of the Advisory Commission.

(6) There may be appointed such officer and servants as may be necessary to assist the Advisory Commission in performing its duties under this Part.

(7) The members of the Advisory Commission may be paid such remuneration out of the Fund as may be determined by the Minister in consultation with the Minister in charge of the subject of Finance.

(8) It shall be the duty of the Advisory Commission—

(a) to inquire into and report to the Minister, on any matter or question relating to the law of Copyright, Industrial Designs, Trade Marks, Patents and Unfair Competition as may be referred to it by the Minister from time to time;



(b) to review the law relating to, and applicable to, Copyright, Industrial Designs, Trade Marks, Patents and Unfair Competition from time to time and to make proposals to the Minister for the alteration, modification or addition to such law;

(c) in making the report or proposals referred to in paragraph (a) or (b), to consult and take into consideration where the Advisory Commission deems it necessary to do so, the views of trade chambers, professional organizations, related institutions, governmental authorities and the general public.

(9) The Minister may give special or general directions in writing to the Advisory Commission, as to the performance of its duties and the exercise of the powers, and the Advisory Commission shall give effect to such directions.

Sinhala Text to Prevail in Case of Inconsistency

3. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.